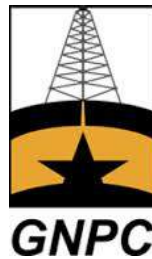


**PETROLEUM AGREEMENT  
BY AND AMONG  
GOVERNMENT OF THE REPUBLIC OF GHANA**



**GHANA NATIONAL PETROLEUM CORPORATION**



**EXXONMOBIL EXPLORATION AND PRODUCTION GHANA  
(DEEPWATER) LIMITED**

**[ ]**

**IN RESPECT OF  
Deepwater Cape Three Points Block Offshore of the Republic of  
Ghana**

**DECEMBER 2017**



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**THIS PETROLEUM AGREEMENT**, made this [●] day of [●] by and among the Government of the Republic of Ghana (hereinafter referred to as the “**State**”), represented by the Minister for Petroleum (hereinafter referred to as the “**Minister**”), the Ghana National Petroleum Corporation, a public corporation established by the Ghana National Petroleum Corporation Act, 1983 PNDCL 64 (hereinafter referred to as “**GNPC**”), [IGC], and ExxonMobil Exploration and Production Ghana (Deepwater) Limited, a company incorporated in Ghana (“**ExxonMobil**”).

**WITNESSES THAT:**

1. All Petroleum existing in its natural state within Ghana is the property of the Republic of Ghana and held in trust by the State on behalf of the people of Ghana.
2. In accordance with the Petroleum Law, the Minister has prepared a reference map showing areas of potential petroleum fields within the jurisdiction of Ghana, divided into numbered areas and each of which is described as a “**Block**”.
3. GNPC has, by virtue of the Petroleum Law, the right to undertake Exploration, Development and Production of Petroleum over all Blocks declared by the Minister to be open for Petroleum Operations.
4. GNPC is further authorised to enter into association by means of a petroleum agreement with a contractor for the purpose of Exploration, Development and Production of Petroleum.
5. The Contract Area that is the subject matter of this Agreement has been declared open for Petroleum Operations by the Minister, and the State desires to encourage and promote Exploration, Development and Production within the Contract Area. The State assures Contractor that all of the Contract Area is within the jurisdiction of Ghana.
6. Contractor, having the financial ability, technical competence and professional skills necessary for carrying out the Petroleum Operations herein described, desires to associate with GNPC in the Exploration for, and Development and Production of, the Petroleum resources of the Contract Area.
7. Contractor shall comply with all the applicable laws of Ghana, including without limitation any regulations, policies or directives issued by or other acts of the Petroleum Commission pursuant to the Petroleum Commission Act, 2011 (Act 821).
8. The Parties are committed to providing qualified Ghanaian nationals employment at all levels in the petroleum industry, including technical, administrative and managerial positions, and Contractor accordingly commits to providing and supporting a programme of training for Ghanaian nationals as an integral part of this Agreement.

9. GNPC has aspirations of building operatorship capacity within a period of four 4 years from the Effective Date of this Agreement. Without prejudice to the rights of the Parties under this Agreement, Contractor is committed, pursuant to the terms of this Agreement, to supporting GNPC to develop its institutional capacity to enable GNPC to fulfill its aspirations.
10. The Parties are committed to providing an annual local content plan in line with Local Content Regulations for fulfilling the applicable Ghanaian content requirements with respect to the provision of goods and services.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, it is hereby agreed and declared as follows:

# Article 1

## DEFINITIONS

### 1. In this Agreement:

- 1.1 “**Accounting Guide**” means the accounting guide which is attached hereto as **Error! Reference source not found.** and made a part hereof;
- 1.2 “**Additional Interest**” means the additional interest of GNPC provided in Article 2.5;
- 1.3 “**Affiliate**” means any person, whether a natural person, corporation, partnership, unincorporated association or other entity which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a Party. For this purpose, “**control**” means the direct or indirect ownership of in aggregate fifty percent (50%) or more of voting capital or voting rights of the entitlement (directly or indirectly) to appoint a majority of the directors or equivalent management body of, or to direct the policies or operations of the other entity;
- 1.4 “**Agreement**” means this agreement between the State, GNPC, and Contractor, and includes the Annexes attached hereto, as may be amended by mutual written agreement from time to time;
- 1.5 “**AOE**” has the meaning given to such term in Article 10.2;
- 1.6 “**Appraisal**” means operations or activities carried out pursuant to an Appraisal Programme following a Discovery of Petroleum for the purpose of delineating the accumulations of Petroleum to which that Discovery relates in terms of thickness and lateral extent and estimating the quantity of recoverable Petroleum therein, and all operations or activities to resolve uncertainties required for determination of a Commercial Discovery;
- 1.7 “**Appraisal Programme**” means a programme approved by the Petroleum Commission pursuant to Article 8.5 for the conduct of Appraisal;
- 1.8 “**Appraisal Report**” has the meaning given to such term in Article 14.13;
- 1.9 “**Appraisal Well**” means a well drilled pursuant to an Appraisal Programme;
- 1.10 “**Arm’s Length Transactions**” has the meaning given to such term in Article 11.7;
- 1.11 “**Associated Gas**” means Natural Gas produced from a well in association with Crude Oil;

- 1.12 “**Barrel**” means a quantity or unit of Crude Oil equal to forty-two (42) United States gallons at a temperature of sixty (60) degrees Fahrenheit and at fourteen and sixty-five one-hundredths pounds per square inch at atmospheric pressure (14.65 psia);
- 1.13 “**Block**” means an area of approximately 685 square kilometres depicted on the reference map prepared by the Minister in accordance with the provisions of the Petroleum Law;
- 1.14 “**Business Day**” means a day on which banks are open for business in Accra;
- 1.15 “**Calendar Year**” means a period of twelve (12) months of the Gregorian calendar, commencing on January 1 and ending on the succeeding December 31;
- 1.16 “**Carried Interest**” means an interest held by GNPC pursuant to this Agreement in respect of which Contractor pays for the conduct of Petroleum Operations, as set out in this Agreement, without any entitlement to reimbursement from GNPC;
- 1.17 “**Commercial Discovery**” means a Discovery which is determined to be commercial in accordance with the provisions of Article 8 of this Agreement;
- 1.18 “**Commercial Production Period**” means, in respect of each Development and Production Area, the period from the Date of Commencement of Commercial Production until the termination of this Agreement or earlier relinquishment of such Development and Production Area;
- 1.19 “**Contract Area**” means the area of approximately one thousand four hundred and seventy-four kilometers squared (1,474 km<sup>2</sup>) covered by this Agreement in which Contractor is authorized, in association with GNPC, to explore for, develop and produce Petroleum, which is described in **Error! Reference source not found.** attached hereto and made a part of this Agreement, but excluding any portions of such area in respect of which Contractor’s rights hereunder are from time to time relinquished or surrendered pursuant to this Agreement;
- 1.20 “**Contractor**” means, collectively ExxonMobil and IGC and their respective permitted successors and assignees and each of ExxonMobil and [IGC], individually a “**Contractor Party**” as the context may require;
- 1.21 “**Contract Year**” means a period of twelve (12) Months, commencing on the Effective Date or any anniversary thereof;
- 1.22 “**Crude Oil**” means hydrocarbons which are liquid at fourteen and sixty-five one-hundredths pounds per square inch at atmospheric pressure (14.65



psia) and sixty (60) degrees Fahrenheit and includes condensates and distillates obtained from Natural Gas;

- 1.23 “**Data**” has the meaning given to such term in Article 16.4;
- 1.24 “**Date of Commencement of Commercial Production**” means, in respect of each Development and Production Area, the date on which production of Petroleum under a programme of regular production, lifting and sale commences, as defined in a Development Plan;
- 1.25 “**Date of Commercial Discovery**” means the date referred to in Article 8.14;
- 1.26 “**Decommissioning Security**” means an irrevocable commercial bank guarantee from a bank that has a long term debt rating of at least A+ by Standard & Poor’s, or A1 by Moody’s Investors Service, or an equivalent rating by a successor entity to either agency, and has a net worth of at least five (5) times the secured amount. “**Delivery Point**” for: (a) Crude Oil has the meaning given to such term in Article 10.5; and (b) Natural Gas is as mutually agreed by the Parties;
- 1.27 “**Default Loan Agreement**” means a loan agreement which is:
- (a) with the Contractor as the lender and GNPC as the borrower;
  - (b) in a maximum amount not exceeding the contribution in respect of Production Costs referenced in Article 2.7 which GNPC has failed to pay plus any amounts in payment default under Article 15;
  - (c) available for automatic utilisation in the event that (i) GNPC has defaulted in the payment of its share of Production Costs referenced in Article 2.7 and then only to the extent of any amounts of such Production Costs which GNPC has failed to pay on the due date for the applicable cash call or (ii) the State has failed to make payment by the due date in relation to Crude Oil supplied with respect to the Domestic Supply Requirement under Article 15 and then only to the extent of any such defaulted amount which the State has failed to pay on the due date therefor;
  - (d) repayable out of the revenue obtained from GNPC’s allocation from the Petroleum Holding Fund derived the lifting of Crude Oil from the applicable Development and Production Area;
  - (e) with an interest rate equal to LIBOR plus 8%;
  - (f) to be entered into by the Contractor and GNPC on or prior to the date on which the Development Loan Agreement is entered into; and
  - (g) otherwise on the terms agreed between the Contractor and GNPC on or prior to the date hereof.

- 1.28 **“Development Loan Agreement”** means a loan
- (a) with Contractor as the lender and GNPC as the borrower, subject to Articles 2.9 and 2.10;
  - (b) in a maximum amount not exceeding GNPC's proportionate share of the Development Costs relating to the Additional Interest incurred by the Contractor with respect to the applicable Development and Production Area (such amount to be subject, if applicable, to the terms of Article 2.8);
  - (c) available for utilisation until the date on which the final cash call is due with respect to the Development Costs referred to in paragraph (b);
  - (d) repayable out of the revenue obtained from GNPC's allocation from the Petroleum Holding Fund derived from the lifting of Crude Oil from the applicable Development and Production Area in accordance with a detailed repayment schedule to be agreed;
  - (e) with a non-default interest rate equal to the Specified Rate; and
  - (f) otherwise on the terms agreed between the Contractor and GNPC on or prior to the date hereof.
- 1.29 **“Development”** or **“Development Operations”** means the following activities carried out in connection with a Development Plan: the design, engineering, building and installation of facilities for Production, including drilling of Development Wells, construction and installation of equipment, pipelines, facilities, plants and systems, in and outside the Contract Area, which are required for achieving Production, treatment, transport, storage and lifting of Petroleum, and preliminary Production and testing activities carried out prior to the Date of Commencement of Commercial Production, including all related planning and administrative work, and may also include the construction and installation of approved secondary and tertiary recovery systems;
- 1.30 **“Development Costs”** means Petroleum Costs incurred in Development Operations, including costs incurred in respect of lease, purchase, or rental of assets;
- 1.31 **“Development and Production Area”** means that portion of the Contract Area proposed by Contractor and approved by the JMC (or proposed by GNPC if a Sole Risk Operation pursuant to 11) on the basis of the available seismic and well data to cover the areal extent of an accumulation or accumulations of Petroleum constituting a Commercial Discovery, enlarged in area by ten percent (10%), such enlargement to extend uniformly around the perimeter of such accumulation;

- 1.32 “**Development Period**” means, in respect of each Development and Production Area, the period from the Date of Commercial Discovery until the Date of Commencement of Commercial Production;
- 1.33 “**Development Plan**” means the plan for development of a Commercial Discovery prepared by Contractor in consultation with the JMC and approved by the Minister pursuant to Article 8;
- 1.34 “**Development Well**” means a well drilled in accordance with a Development Plan for producing Petroleum including wells for pressure maintenance or increasing the Production rate;
- 1.35 “**Discovery**” means finding within a well at the end of drilling under Exploration Operations (an) accumulation(s) of Petroleum whose existence, until that finding, was not previously known or proven to have existed, which is or can be recovered at the surface in a flow measurable by conventional international petroleum industry testing methods (which, in the case of water depths greater than four hundred (400) metres, may include Modular Formation Dynamics Testing (also referred to as “MDT” by Schlumberger));
- 1.36 “**Discovery Area**” means that portion of the Contract Area, reasonably proposed by Contractor and approved by the JMC (or proposed by GNPC if such area occurs as a result of a Sole Risk pursuant to 11) on the basis of the available seismic and well data, that covers the areal extent of the geological structure in which a Discovery is made. A modification to the Discovery Area may be proposed by Contractor at any time and approved by the JMC (or proposed by GNPC to the extent permitted by 11, if applicable), if justified on the basis of new information, up to the date of submission of a report under Article 8.9;
- 1.37 “**Discovery Notice**” means a written notification of Discovery to the Minister, the Petroleum Commission, and GNPC pursuant to Article 8.1 providing information which shall include the date of Discovery, the name and location of the well from which the accumulation(s) have been found, the depth interval(s), estimates of gross and net pay thickness, stratigraphy, and type of reservoir and fluids encountered;
- 1.38 “**Domestic Supply Requirement**” has the meaning given to such term in Article 15.1;
- 1.39 “**Effective Date**” shall have the meaning ascribed to it in Article 26.17;
- 1.40 “**Exploration**” or “**Exploration Operations**” means the search for Petroleum by geological, geophysical and other methods, and the drilling of Exploration Well(s) and Appraisal Wells, and includes any activity in connection therewith or in preparation thereof and any relevant processing and Appraisal work, including technical and economic feasibility studies,

that may be carried out to determine whether a Discovery of Petroleum constitutes a Commercial Discovery;

- 1.41 “**Exploration Costs**” means Petroleum Costs incurred in Exploration Operations;
- 1.42 “**Exploration Period**” means the period commencing on the Effective Date and continuing during the time provided for in Article 3.1 within which Contractor is authorised to carry out Exploration Operations, and shall include any periods of extensions provided for in this Agreement. The period shall terminate with respect to any Discovery Area on the Date of Commercial Discovery in respect of such Discovery Area;
- 1.43 “**Exploration Phase**” means any one of the Initial Exploration Period, the First Extension Period or the Second Extension Period;
- 1.44 “**Exploration Well**” means a well drilled in the course of Exploration Operations conducted hereunder during the Exploration Period, excluding Appraisal Wells;
- 1.45 “**Extension Period**” means either the First Extension Period or Second Extension Period, as applicable;
- 1.46 “**First Extension Period**” has the meaning given to such term in Article 3.1(a);
- 1.47 “**Force Majeure**” means any event beyond the reasonable control of the Party claiming to be affected by such event, which has not been brought about directly or indirectly at its own instance or which has not been brought about directly or indirectly at the instance of an Affiliate. Force Majeure events may include acts of God, accidents, fires, explosions, earthquake, storm, flood, hurricanes, tidal waves, cyclones, tornados, lightning or other adverse weather conditions or any other natural disasters, war, acts of war, acts of terrorism, embargo, blockade, epidemic, riot, civil disorder, or strikes;
- 1.48 “**Foreign National Employee**” means an expatriate employee of Contractor, its Affiliates, or its Subcontractors who is not a citizen of Ghana;
- 1.49 “**Ghana**” means the territory of the Republic of Ghana and includes rivers, streams, water courses, the territorial sea, seabed and subsoil, the contiguous zone, the exclusive economic zone, continental shelf, the airspace, and all other areas within the jurisdiction of the Republic of Ghana;
- 1.50 “**GNPC**” has the meaning given to such term in the Preamble;
- 1.51 “**Gross Negligence / Wilful Misconduct**” means any act, failure to act, or failure to exercise such minimum degree of care and prudence (whether sole, joint, or concurrent) by a Party which was in reckless disregard of or wanton indifference to the harmful consequences that the person knew, or

should reasonably have known, could have on the safety or property of another person or entity;

- 1.52 “**Gross Production**” means the total amount of Petroleum produced and saved from a Development and Production Area during Production Operations, which is not used by Contractor in Petroleum Operations, and is available for distribution to the Parties in accordance with 12;
- 1.53 “**ICC**” has the meaning given to such term in Article 24.1;
- 1.54 “**ICC Rules**” has the meaning given to such term in Article 24.1;
- 1.55 “**IGC**” has the meaning given to such term in the Preamble. The IGC’s Participating Interest in all rights and obligations under this Agreement shall be five percent (5%).
- 1.56 “**Indigenous Ghanaian Company**” means a company incorporated under the Companies Act, 1963 (Act 179) of Ghana:
- (a) that has at least fifty-one percent (51%) of its equity owned by a citizen or citizens of Ghana; and
  - (b) that has Ghanaian citizens holding at least eighty percent (80%) of senior management positions and one hundred percent (100%) of non-managerial and other positions;
- 1.57 “**Initial Exploration Period**” has the meaning given to such term in Article 3.1(a);
- 1.58 “**Initial Interest**” means the interest of GNPC in all Petroleum Operations provided for in Article 2.4;
- 1.59 “**International Oil Field Practice**” means those practices that are generally accepted in the international petroleum industry as good, safe, and efficient in exploring for, developing, producing, processing, and transporting Petroleum;
- 1.60 “**Joint Management Committee**” or “**JMC**” means the committee established pursuant to Article 6.1;
- 1.61 “**Joint Operating Agreement**” or “**JOA**” means an agreement among all of the Contractor Parties with respect to the Contract Area and their respective rights and/or obligations under this Agreement, as such agreement may be amended or supplemented from time to time;
- 1.62 “**LIBOR**” means the interest rate per annum equal to the London Interbank Offered Rate administered by ICE Benchmark Limited (or any other person which takes over the administration of that rate) for one (1) one month U.S. dollar deposits, as published in London by the *Financial Times*. In the event

that the *Financial Times* is not published, then as published by *The Wall Street Journal*;

- 1.63 “**LNG**” means Liquefied Natural Gas;
- 1.64 “**Local Content Regulations**” means the Petroleum (Local Content and Local Participation) Regulations, 2013, L.I. 2204;
- 1.65 “**Market Price**” means the market price for Crude Oil realized by Contractor under this Agreement as determined in accordance with Article 11.7;
- 1.66 “**Minister**” has the meaning given to such term in the Preamble;
- 1.67 “**Minimum Work Obligation**” means Contractor’s obligations set forth in: (a) Article 4.3(a)**Error! Reference source not found.** with respect to the Initial Exploration Period; (b) Article 4.3(b)**Error! Reference source not found.** with respect to the First Extension Period; or (c) Article 4.3(c)**Error! Reference source not found.** with respect to the Second Extension Period;
- 1.68 “**Month**” means a month of the Calendar Year;
- 1.69 “**Natural Gas**” means all hydrocarbons which are gaseous at fourteen and sixty-five one-hundredths pounds per square inch at atmospheric pressure (14.65 psia) and sixty (60) degrees Fahrenheit, and includes wet gas, dry gas, and residue gas remaining after the extraction of liquid hydrocarbons from wet gas;
- 1.70 “**Non-Associated Gas**” means Natural Gas produced from a well other than in association with Crude Oil;
- 1.71 “**Operator**” means ExxonMobil or such other Party as may be jointly proposed by Contractor and GNPC and approved by the Minister to conduct Petroleum Operations hereunder on behalf of the Parties;
- 1.72 “**Participating Interest**” means the interest held by each Contractor Party (expressed as a percentage to four (4) decimal places) in accordance with the provisions of Article 2.13;
- 1.73 “**Party**” means each of the State, GNPC, IGC, or ExxonMobil, as the case may be;
- 1.74 “**Paying Interest**” means an interest held by GNPC in respect of which GNPC pays for the conduct of Petroleum Operations as expressly provided for in Article 2.5;
- 1.75 “**Petroleum**” means Crude Oil or Natural Gas, or a combination of both;

- 1.76 “**Petroleum Commission**” means a body established by the Petroleum Commission Act, 2011 (Act 821) for the regulation and the management of the utilization of petroleum resources in the upstream sector;
- 1.77 “**Petroleum Costs**” means all expenditures made and costs incurred in conducting Petroleum Operations hereunder determined in accordance with the Accounting Guide;
- 1.78 “**Petroleum Income Tax Law**” means the Income Tax Act, 2015 (Act 896);
- 1.79 “**Petroleum Law**” means the Petroleum (Exploration and Production) Act, 2016 (Act 919);
- 1.80 “**Petroleum Operations**” means all activities, both in and outside Ghana, relating to or in connection with the Exploration for, Appraisal of, Development, Production, handling, storage, processing, and transportation to the Delivery Point, of Petroleum contemplated under this Agreement;
- 1.81 “**Pre-Award Attachment**” means any order, decree, injunction, or other decision (however designated) of any court, arbitral body, or other competent authority requested by a Party and issued prior to a final arbitral award issued pursuant to Article 24 of this Agreement that attaches, seizes, freezes, or otherwise restricts the use or alienation of any property (whether tangible or intangible) of the other Party pending issuance of the final arbitral award, whether such property is in the possession or control of a Party or of a third party;
- 1.82 “**Production**” or “**Production Operations**” means activities, other than Exploration Operations or Development Operations, undertaken in order to extract, save, treat, measure, handle, store, load, or transport (to the Delivery Point) Petroleum to storage and/or loading points, and to carry out any type of primary, secondary or tertiary recovery operations, including recycling, recompression, injection for maintenance of pressure, and water flooding, and all related activities such as planning and administrative work, and shall also include maintenance, repair, abandonment or decommissioning and replacement of facilities, and well workovers, conducted after the Date of Commencement of Commercial Production of the respective Development and Production Area;
- 1.83 “**Production Costs**” means Petroleum Costs incurred in Production Operations;
- 1.84 “**Proposed Appraisal Programme**” means a draft of a programme for the conduct of an Appraisal to be presented to the Petroleum Commission for approval;
- 1.85 “**Quarter**” means a period of three (3) consecutive Months, commencing January 1, April 1, July 1, or October 1, and ending March 31, June 30, September 30, or December 31, respectively;



- 1.86 “**ROR**” has the meaning given to such term in Article 10.2;
- 1.87 “**Royalty**” has the meaning given to such term in Article 10.1(a);
- 1.88 “**Second Extension Period**” has the meaning given to such term in Article 3.1(a);
- 1.89 “**Security**” means: (i) an irrevocable standby letter of credit or irrevocable commercial bank guarantee issued by a bank; (ii) an on-demand bond issued by a surety corporation; or (iii) an irrevocable guarantee issued by a company or government; provided that the bank, surety, company, or government issuing the guarantee, standby letter of credit, bond, or other security (as applicable) has a long term debt rating of at least A+ by Standard & Poor’s, or A1 by Moody’s Investors Service, or an equivalent rating by a successor entity to either agency, and has a net worth of at least five (5) times the secured amount. For company or government guarantees, ratings will be determined by looking at the ultimate parent company or sovereign rating;
- 1.90 “**Selling Party**” has the meaning given to such term in Article 25.5;
- 1.91 “**Senior Supervisory Personnel**” means, with respect to a Party: (a) any individual who functions as a senior resident manager who directs all operations and activities of such Party in the country or region in which he is resident; (b) any manager who directly reports to such senior resident manager above in such country or region responsible for Exploration, Development or Production; (c) any individual who functions for such Party or one of its Affiliates at a management level equivalent to or superior to the above specified senior resident manager or direct report positions and is responsible for Exploration, Development or Production; or (d) any designated officer or director of such Party or one of its Affiliates;
- 1.92 “**Sole Expert**” means the person appointed to resolve a dispute pursuant to Article 24.8;
- 1.93 “**Sole Risk**” means an operation conducted at the sole cost, risk, expense, and liability of GNPC referred to in 11;
- 1.94 “**Specified Rate**” means LIBOR plus four percent (4%);
- 1.95 “**State**” has the meaning given to such term in the Preamble;
- 1.96 “**Subcontractor**” means a third party with whom GNPC or Contractor has entered into a contract for provisions of goods or services for, or in connection with, Petroleum Operations;
- 1.97 “**Termination**” means termination of this Agreement pursuant to Article 23 hereof;
- 1.98 “**USIGWPI**” has the meaning given to such term in Article 10.2;



- 1.99 “**Work Programme**” means the annual plan for the conduct of Petroleum Operations prepared pursuant to Articles 6.4 and 6.5; and
- 1.100 “**Year**” means a continuous twelve (12) Month period.

## Article 2

### **SCOPE OF THE AGREEMENT, INTERESTS OF THE PARTIES AND CONTRACT AREA**

- 2.1 This Agreement provides for the Exploration for, and Development and Production of, Petroleum in the Contract Area by GNPC in association with Contractor.
- 2.2 Subject to the provisions of this Agreement, Contractor shall be responsible for the execution of such Petroleum Operations as are required by the provisions of this Agreement. In order that the Parties may cooperate in the implementation of Petroleum Operations, GNPC and Contractor shall establish a Joint Management Committee to oversee Petroleum Operations.
- 2.3 In the event that no Commercial Discovery is made in the Contract Area or that Gross Production achieved from the Contract Area is insufficient to fully reimburse Contractor in accordance with the terms of this Agreement, then Contractor shall bear its own loss; GNPC and the State shall have no obligations whatsoever to Contractor in respect of such loss.
- 2.4 GNPC shall have a fifteen percent (15%) Initial Interest in all Petroleum Operations under this Agreement. With respect to all Exploration Operations and Development Operations, Initial Interest shall be a Carried Interest. With respect to all Production Operations GNPC's, the Initial Interest shall be a Paying Interest.
- 2.5 In addition to the Initial Interest provided for in Article 2.4, GNPC shall have the option, in respect of each Development and Production Area, to acquire an Additional Interest of up to three percent (3%) in the Petroleum Operations in such Development and Production Area, by contributing the corresponding proportionate share to all Petroleum Costs incurred after the Date of Commercial Discovery, in respect of such Development and Production Area. With respect to all Development Operations and Production Operations, the Additional Interest shall be a Paying Interest. GNPC shall notify the Contractor of its intention to acquire the Additional Interest within ninety (90) days of the Date of Commercial Discovery.
- 2.6 If GNPC elects to take an Additional Interest as provided for in Article 2.5 then within six (6) Months of the date of its election, GNPC shall reimburse the Contractor for all expenditures attributable to GNPC's Additional Interest incurred from the Date of Commercial Discovery to the date GNPC notifies Contractor of its election.
- 2.7 For the avoidance of doubt, GNPC shall only be liable to contribute to Petroleum Costs:
  - (a) incurred in respect of Development Operations in any Development and Production Area to the extent only of any Additional Interest acquired in

such Development and Production Area under Article 2.5 and the expenditures described in Article 2.6; and

- (b) incurred in respect of Production Operations (excluding costs for abandonment and decommissioning) in any Development and Production Area to the extent of:
    - i) its Initial Interest; and
    - ii) any Additional Interest acquired under Article 2.5.
- 2.8 GNPC may during the Exploration Period contribute to Petroleum Operations by providing such relevant services as may be specified by the JMC from time to time. Prior to the provision of such services, and subject to JMC Approval, Contractor must specify in writing whether GNPC is either to (i) be paid in cash for such services by Contractor upon receipt of invoice from GNPC, or (ii) earn credit for the costs of providing such services against GNPC's share, if any, of future Development and/or Production Costs. The amount of costs to be invoiced or credit earned by GNPC pursuant to this paragraph must be approved by the JMC prior to provision of the relevant services, and shall be at fair market rates at which such services could be obtained under freely competitive conditions at the time of such approval. If costs are to be invoiced, Contractor shall pay GNPC the invoiced amount within thirty (30) days of receipt of the invoice.
- 2.9 Upon notifying Contractor of its decision to acquire an Additional Interest Article 2.5, GNPC shall specify in the notification one or more of the following:
- (a) that notwithstanding the provisions in Article 2.6, GNPC shall, in accordance with and subject to Article 2.10, elect to have Contractor advance, in whole or in part, GNPC's proportionate share of Development Costs incurred in respect of the Additional Interest, and such advances shall be repaid with interest at the Specified Rate in accordance with the terms of the Development Loan Agreement ; and
  - (b) notify Contractor of any arrangements for the payment of the balance of GNPC's total proportionate share of Development Costs.
- 2.10 If GNPC so elects pursuant to Article 2.9, the financing of the Development Costs associated with an Additional Interest in relation to one Development and Production Area designated by Contractor (including the amount of expenditure described in Article 2.6), shall be advanced to GNPC by Contractor in the form of a loan, and such advances shall be repaid to Contractor by GNPC in accordance with the terms and conditions of the Development Loan Agreement.
- 2.11 In the event of any default by (i) GNPC to make any contribution in respect of Production Costs as referred to in Article 2.7(b) or (ii) default by the State

in payment due to Contractor pursuant to Article 15, the amount of such defaulted payment shall be automatically converted into a loan, the advance and repayment (which shall be subject to interest thereon in accordance with Article 26.6) of which shall be governed by the terms and conditions of the Default Loan Agreement. GNPC hereby agrees that it shall enter into the Default Loan Agreement for the above purposes on or prior to the Development Loan Agreement.

- 2.12 Contractor's Participating Interest in all Petroleum Operations and in all rights under this Agreement shall be eighty five (85%) of the total interest under this Agreement, reduced proportionately on each Contractor Party pro rata to its Participating Interest, at any given time and in any given part of the Contract Area by the exercise of the option of Additional Interest of GNPC pursuant to Article 2.5 or the exercise of the Sole Risk interest of GNPC pursuant to 11.
- 2.13 For the avoidance of doubt, the Participating Interest shall be divided as at the Effective Date as follows:
  - (a) ExxonMobil: 80% of the total interest under this Agreement; and
  - (b) IGC: 5% of the total interest under this Agreement.
- 2.14 As of the Effective Date, the Contract Area, as depicted by Annex 1, shall from time to time during the term of this Agreement be reduced according to the terms herein. During the term of this Agreement, Contractor shall pay feesto the State for that area included within the Contract Area at the beginning of each Contract Year according to the provisions of Article 12.1(e) below.

## Article 3

### EXPLORATION PERIOD

- 3.1 The Exploration Period shall begin on the Effective Date and, subject to Article 22.8, shall not extend beyond six (6) Contract Years, except if Contractor elects to drill an Exploration Well in the Initial Exploration Period, the Exploration period shall be seven (7) Contract Years.

The Exploration Period may be extended as provided for in accordance with the Petroleum Law.

- (a) The Exploration Period shall be divided into an Initial Exploration Period of two and a half (2.5) Years (“**Initial Exploration Period**”) and two (2) extension periods, the first of two (2) Years and the second of one and a half (1.5) Year each (respectively, “**First Extension Period**” and “**Second Extension Period**”) and, where applicable, the further periods for which provision is made hereafter. If Contractor notifies the Petroleum Commission of its election to drill an Exploration Well in the Initial Exploration Period, the Initial Exploration Period shall be extended to three and a half (3.5) Years.
- (b) Where Contractor has fulfilled its obligations set out in Article 4.3 before the end of the Initial Exploration Period or, as the case may be, the First Extension Period, and has exercised its option by applying to the Minister in writing for an extension, the Minister will be deemed to have granted an extension into the First Extension Period or, as the case may be, into the Second Extension Period.
- 3.2 Following the end of the Second Extension Period, subject to the provisions of Article 3.4, Contractor will be entitled to an extension or extensions, by reference to Article 8, of the Exploration Period as follows:
- (a) Where at the end of the Second Extension Period Contractor is drilling or testing any well, Contractor shall be entitled to an extension for such further period as may be reasonably required to enable Contractor to complete such work and assess the results and, in the event that Contractor notifies the Minister that the results from any such well show a Discovery which merits Appraisal, Contractor shall be entitled to a further extension for such period as may be reasonably required to carry out an Appraisal Programme and determine whether the Discovery constitutes a Commercial Discovery;
- (b) Where at the end of the Second Extension Period Contractor is engaged in the conduct of an Appraisal Programme in respect of a Discovery which has not been completed, Contractor shall be entitled to a further extension for such period as may be reasonably required to complete that Appraisal Programme and determine whether the Discovery constitutes a Commercial Discovery;

- (c) Where at the end of the Second Extension Period Contractor has undertaken work not falling under Articles 3.2((a), 3.2((b), or 4.3(c) which is not completed, Contractor shall be entitled to a further extension for such period as the Minister considers reasonable for the purpose of enabling such work to be completed; and
- (d) Where pursuant to Article 8 Contractor has before the end of the Second Extension Period, including extensions under Articles 3.2((a), 3.2((b), or 3.2((c) above, given to the Minister a notice of Commercial Discovery, Contractor shall, if the Exploration Period would otherwise have been terminated, be entitled to a further extension of the Exploration Period in respect of the Discovery Area during which Contractor must prepare the Development Plan in respect of the Commercial Discovery until either:
  - i) the Minister has approved the Development Plan as set out in Article 8; or
  - ii) in the event that the Development Plan is not approved by the Minister as set out in Article 8 and the matter or matters in issue between the Minister and Contractor have been referred for resolution under Article 24, one (1) Month after the date on which the final decision thereunder has been given.

3.3 Where at the end of the Initial Exploration Period or, as the case may be, at the end of the First Extension Period, Contractor has failed to complete its Minimum Work Obligations as specified in Articles 4.3((a) or 4.3((b) in respect of that period (including in the circumstances contemplated in Article 4.8, but has made reasonable arrangements during the Initial Exploration Period or the First Extension Period, as applicable, to remedy its default, Contractor may apply to the Minister for further extension. The Minister may refuse to grant or grant in his discretion an extension on the then current applicable period subject to such reasonable terms and conditions as the Minister may stipulate to assure performance of the work.

3.4 Save in respect of a Discovery Area:

- (a) in the circumstances and subject to the limitations set forth in Section 21(5) of the Petroleum Law;
- (b) in a case falling within the provisions of Article 3.2((d); or
- (c) in circumstances where Article 22.8 applies,

subject to Article 3.5 and Article 8, nothing in Article 3.2 shall be read or construed as requiring the extension of the Exploration Period beyond seven (7) years from the Effective Date.

3.5 The provisions of Articles 3.2((a), 3.2((b), 3.2((c), and 3.3, so far as they relate to the duration of the relevant Extension Period to which Contractor

will be entitled, shall be read and construed as requiring the Minister to give effect to the provisions of Article 8 relating to the time within which Contractor must meet the requirements of that Article.

## Article 4

### MINIMUM EXPLORATION PROGRAMME

- 4.1 Exploration Operations shall begin as soon as practicable and in any case not later than sixty (60) days after the Effective Date.
- 4.2 GNPC shall, at the request of Contractor, make available to Contractor such records and information relating to the Contract Area as are relevant to the performance of Exploration Operations by Contractor and are in GNPC's possession, provided that Contractor shall reimburse GNPC for licensing the data and for other costs reasonably incurred in procuring or otherwise making such records and information available to Contractor.
- 4.3 Subject to the provisions of this 0, in discharge of its obligations to carry out Exploration Operations in the Contract Area, Contractor shall, during the several phases into which the Exploration Period is divided, carry out the obligations specified hereinafter:
- (a) **Initial Exploration Period:** Commencing on the Effective Date and terminating two and a half (2.5) Years from the Effective Date, unless extended pursuant to Article 3.1.

#### **Description of Contractor's Minimum Work Obligation:**

Acquire, process and interpret two thousand two hundred and twenty-two kilometers squared (2,222 km<sup>2</sup>) of 3D seismic.

**Minimum Expenditure:** Contractor's minimum expenditure for the work in the Initial Exploration Period shall be twenty million United States Dollars (US\$20 million).

#### **Contractor's Optional Well:**

Contractor may choose to drill an Exploration Well during the Initial Exploration Period.

In the event Contractor elects to drill an Exploration Well, Contractor's minimum expenditure for the additional work in the Initial Exploration Period shall be thirty million United States Dollars (US\$30 million).

- (b) **First Extension Period:** Commencing at the end of the Initial Exploration Period and terminating two (2) Years from the expiration of the Initial Exploration Period.

#### **Description of Contractor's Minimum Work Obligation:**



Drill one (1) Exploration Well.

**Minimum Expenditure:** Contractor's minimum expenditure for the work in the First Extension Period shall be thirty million United States Dollars (US\$30 million).

- (c) **Second Extension Period:** Commencing at the end of the First Extension Period and terminating one and a half (1.5) Years from the expiration of the First Extension Period, or as may be extended under this Agreement. If, within the first 6 months of the Second Extension Period, Contractor fails to notify the Petroleum Commission of its election to drill an Exploration, the Second Extension Period shall terminate.

**Description of Contractor's Minimum Work Obligation:**

Drill one (1) Exploration Well .

**Minimum Expenditure:** Contractor's minimum expenditure for the work in the Second Extension Period shall be thirty million United States Dollars (US\$30 million).

Work accomplished in any period in excess of the above obligations may be applied as credit in satisfaction of obligations called for in any other period. The fulfillment of any Minimum Work Obligation shall relieve Contractor of the corresponding minimum expenditure obligation. Without prejudice to Article 23.3(e), should Contractor fail to perform its Minimum Work Obligations under Articles 4.3(a), 4.3 (b), or 4.3 (c), as applicable, Contractor shall pay to GNPC an amount equal to the minimum expenditure obligation, as reduced by the value of work already performed, for the relevant Exploration Phase.

- 4.4 Within ninety (90) days after the Effective Date, Contractor shall provide to GNPC Security in the amount of twenty million United States Dollars (US\$20 million) to cover the minimum expenditure obligation for the Initial Exploration Period. This Security shall be: (a) reduced proportionately by the work performed; and (b) released upon completion of the Minimum Work Obligation.
- 4.5 The seismic programme in Article 4.3(a), when combined with existing data, shall be such as will enable a study of the regional geology of the Contract Area and the preparation of a report thereon with appropriate maps, cross sections, and illustrations, as well as a geophysical survey of the Contract Area which, when combined with existing data, shall provide:
- (a) A minimum seismic grid adequate to define prospective drill sites over prospective closures as interpreted from data available to Contractor; and

(b) A seismic evaluation of structural and stratigraphic conditions over the remaining portions of the Contract Area.

4.6 Each Exploration Well shall be drilled at a location and to an objective depth determined by Contractor in consultation with GNPC. Except as otherwise provided in Article 4.7 and 4.8 below, the minimum depth of each Exploration Well in Articles 4.3(b) and 4.3(c) shall be whichever of the following is first encountered:

- a) the depth of four thousand five hundred (4,500) metres measured from the Rotary Table Kelly Bushing (RTKB);
- b) one hundred (100) metres below the depth at which the primary target is first encountered; or
- c) the depth at which Contractor encounters geologic basement; or conditions are encountered which render further commercial hydrocarbon potential highly unlikely;

unless GNPC consents otherwise, which consent shall not be unreasonably withheld or delayed.

4.7 The minimum depth of one (1) of the obligatory Exploration Wells in Article 4.3 shall be whichever of the following is first encountered:

- a) the depth of four thousand five hundred (4,500) metres measured from the Rotary Table Kelly Bushing (RTKB);
- b) the depth sufficient to penetrate three hundred fifty (350) metres into the Campanian; or
- c) the depth at which Contractor encounters geological basement;

unless GNPC consents otherwise, which consent shall not be unreasonably withheld or delayed.

4.8 If in the course of drilling an Exploration Well Contractor concludes that drilling to the minimum depth specified in Articles 4.6 and 4.7 above is impossible, impracticable, or imprudent in accordance with International Oil Field Practice, then Contractor may plug and abandon the Exploration Well, and the JMC shall have the option of either: (a) waiving the minimum depth requirement, in which case Contractor will be deemed to have satisfied the obligation to drill such Exploration Well; or (b) requiring Contractor to drill a substitute Exploration Well at a location determined by Contractor in consultation with GNPC and to the minimum depth set forth in Article 4.6 or 4.7, except that if in the course of drilling such substitute Exploration Well Contractor establishes that drilling to the minimum depth specified in

Article 4.6 or 4.7 above is impossible, impracticable or imprudent in accordance with International Oil Field Practice, then Contractor may plug and abandon the substitute Exploration Well and will be deemed to have satisfied the obligation to drill one (1) Exploration Well.

- 4.9 During the Exploration Period, Contractor shall have the right to perform additional Exploration Operations subject to the terms of this Agreement and approval by the JMC pursuant to Article 6.4, including performing gravity and magnetic surveys, drilling stratigraphic wells, and performing additional geological and geophysical studies, provided the Minimum Work Obligations are completed within the applicable period. Provided further that Contractor may elect to perform such additional Exploration Operations in the absence of approval by the JMC and the costs of such additional Exploration Operations shall not be considered Petroleum Costs. However, such costs shall only be Petroleum Costs for purposes of AOE if there arises a subsequent Commercial Discovery associated with such additional Exploration Operations. Any such subsequent Commercial Discovery shall be treated hereunder in the same manner as if such Commercial Discovery had been made in connection with operations that were not performed as sole risk operations including participation by GNPC in such Commercial Discovery.
- 4.10 During the Exploration Period, Contractor shall deliver to GNPC and the Minister summary reports on Exploration Operations conducted in the Contract Area during each Quarter within thirty (30) days following the end of that Quarter. Contractor shall comply with further reasonable requests for information by the Minister under Section 25(1) of the Petroleum Law within a reasonable time, and copies of documents and other material containing such information shall be provided by Contractor to GNPC.

## Article 5

### RELINQUISHMENT

- 5.1 Except as provided in Articles 5.2, 8.3, 8.11, 8.17, 8.17, 8.18, 8.19, 8.20, 8.21, and 14.11, Contractor shall relinquish portions of the Contract Area in the manner provided hereafter:
- (a) If on or before the expiration of the Initial Exploration Period Contractor elects to enter into the First Extension Period pursuant to Article 3.1((b), then Contractor shall retain fifty percent (50%) of the Contract Area.
  - (b) If on or before the expiration of the First Extension Period Contractor elects to enter into the Second Extension Period pursuant to Article 3.1((b), then subject to Article 5.2, at the commencement of the Second Extension Period the area retained shall not exceed twenty-five percent (25%) of the original Contract Area (excluding all Discovery Areas and Development and Production Areas pursuant to Article 5.2); and
  - (c) On the expiration of the Second Extension Period Contractor shall, subject to Article 5.2, relinquish the remainder of the retained Contract Area.
- 5.2 The provisions of Article 5.1 shall not be read or construed as requiring Contractor to relinquish any portion of the Contract Area which constitutes or forms part of either a Discovery Area or a Development and Production Area; provided, however, that if at the end of the Initial Exploration Period or the First Extension Period, as the case may be, Contractor elects not to enter into the First Extension Period or Second Extension Period, Contractor shall relinquish the entire Contract Area, except any Discovery Area(s) and Development and Production Area(s).
- 5.3 Each area to be relinquished pursuant to this Article shall be selected by Contractor and shall be, as far as possible, contiguous and compact units of a size and shape which will permit the carrying out of Petroleum Operations in the relinquished portions.

## Article 6

### JOINT MANAGEMENT COMMITTEE

- 6.1 In order that GNPC and Contractor may cooperate in the implementation of Petroleum Operations, GNPC and Contractor shall not later than thirty (30) days after the Effective Date establish a Joint Management Committee (JMC). Without prejudice to the rights and obligations of Contractor for day-to-day management of the operations and subject to Article 6.3, the JMC shall oversee and approve the Petroleum Operations and ensure that all approved Work Programmes and Development Plans are complied with and also that accounting for costs and expenses and the maintenance of records and reports concerning the Petroleum Operations are carried out in accordance with this Agreement and International Oil Field Practice.
- 6.2 The composition and distribution of functions within the JMC shall be as provided hereinafter:
- (a) The JMC shall consist of two (2) representatives of GNPC and two (2) representatives of the Contractor. Any Contractor Party not represented on the JMC may appoint an observer to attend all JMC meetings and shall receive copies of all notices and materials distributed to the members of the JMC concurrently with the distribution of such notices and materials to the JMC members. GNPC and Contractor shall also designate an alternate for each of their representatives. In the case of absence or incapacity of a member of the JMC, such alternate shall automatically assume the rights and obligations of the absent or incapacitated member;
  - (b) The chairperson of the JMC shall be designated by GNPC from amongst the members of the JMC;
  - (c) Contractor shall be responsible, in consultation with GNPC, for the preparation of an agenda and supporting documents for each meeting of the JMC and for keeping records of the meetings and decisions of the JMC. GNPC shall have the right, upon reasonable notice, to inspect all records of the JMC during business hours. Operator shall circulate the agenda and supporting documents for each meeting to all representatives designated pursuant to Article 6.2((a); and
  - (d) At any meeting of the JMC, three (3) representatives (including alternates, if applicable) shall form a quorum.
- 6.3 Meetings of the JMC shall be held and decisions taken as follows:
- (a) All meetings of the JMC shall be held in Accra, Houston, or London, or such other place as may be agreed upon by members of the JMC;
  - (b) The JMC shall meet at least twice per Year and at such times as the members may agree;

- (c) A meeting of the JMC may be convened by either GNPC or the Contractor giving not less than twenty (20) days' notice to the other or, in a case requiring urgent action, notice of such lesser duration as the members may agree upon;
- (d) All decisions of the JMC, which are limited to only those decisions pursuant to Articles 1.30, 1.35, 2.8, 4.8, 6.3(h), 6.4, 6.5, 6.7, 8.18, 9.8, and 18.6 shall require unanimity among GNPC and Contractor, and all representatives of a Party shall vote the same way;
- (e) Any member of the JMC may vote by written and signed proxy held by another member, so long as such member is a representative of the same Party as the other member;
- (f) Decisions of the JMC may be made without holding a meeting if all representatives of GNPC and Contractor notify their consent thereto in the manner provided in Article 27;
- (g) GNPC and Contractor shall have the right to bring expert advisors to any JMC meetings to assist in the discussions of technical and other matters requiring expert advice;
- (h) The JMC may also establish such subcommittees as it deems appropriate for carrying out its functions including:
  - i) a technical subcommittee;
  - ii) an audit subcommittee;
  - iii) an accounting subcommittee; and
  - iv) a contract/procurement subcommittee,
 and each subcommittee shall function in an advisory capacity to the JMC or as otherwise determined unanimously by the JMC; and
- (i) Reasonable costs and expenses, as evidenced by invoices and/or receipts related to attendance by GNPC in or outside Accra (e.g., travel, transportation, lodging, per diem, and insurance), in accordance with applicable laws, regulations, and GNPC policies and procedures shall: (i) be borne by Contractor and treated as Petroleum Costs; and (ii) not include any costs and expenses related to attendance for any GNPC expert advisors pursuant to Article 6.3(g), unless otherwise agreed by GNPC and Contractor.

6.4 The JMC shall oversee Exploration Operations as follows:

- (a) Not later than sixty (60) days after the Effective Date and thereafter at least ninety (90) days before the commencement of each subsequent Calendar Year, Contractor shall prepare and submit to the JMC for review and

approval a Work Programme and budget covering all Exploration Operations which Contractor proposes to carry out in that Calendar Year and shall also give an indication of Contractor's tentative preliminary Exploration plans for the succeeding Calendar Year. Where the Effective Date occurs later than June 30 in any Calendar Year, Contractor shall have the option of submitting a single detailed Work Programme and budget covering: (i) the remaining Months of the Calendar Year in which the Effective Date occurs; and (ii) the succeeding Calendar Year. If a Work Programme and budget for the subsequent Calendar Year is not approved by the JMC by December 15, the JMC shall be deemed to have approved a Work Programme and budget for the subsequent Calendar Year submitted by Contractor that sets out those Petroleum Operations that Contractor determines are: (i) consistent with the scope of, and not in conflict with, the Minimum Work Obligations and the commitments of a previously approved Work Programme and budget for Exploration Operations (if any); and (ii) reasonably necessary to keep this Agreement in full force and effect and to ensure the integrity of Petroleum Operations in accordance with International Oil Field Practice;

- (b) Upon notice to GNPC, Contractor may amend any Work Programme and budget submitted to the JMC pursuant to this Article 6.4, which notice will state why in Contractor's opinion the amendment is necessary or desirable. Any such amendment shall be submitted to the JMC for review and approval;
- (c) Every Work Programme and budget submitted to the JMC pursuant to this Article 6.4, and every amendment thereof, shall be consistent with the requirements set out in Article 4.3 relating to the Minimum Work Obligation for the period of the Exploration Phase in which such Work Programme and budget falls;
- (d) Notwithstanding Article 8.1, Contractor shall notify GNPC as soon as possible after Contractor determines there has been a Discovery, but in any event not later than two (2) Business Days after Contractor's determination that there has been a Discovery. Pursuant to Article 8.4, Contractor may subsequently place before the JMC for review its Proposed Appraisal Programme. Within thirty (30) days of completion of the Appraisal Programme, a JMC meeting to discuss the results of the Appraisal Programme shall be convened before submission of the detailed Appraisal report provided for in Article 8.9.
- (e) The JMC will review and approve Work Programmes and budgets (and any amendments or revisions thereto) and review the Proposed Appraisal Programmes (and any amendments or revisions thereto), submitted to it by Contractor pursuant to this Article 6.4, and timely give such advice as it deems appropriate which Contractor shall consider before submitting such Work Programmes and budgets or Proposed Appraisal Programmes (and



any amendments or revisions thereto) for approvals required by law or this Agreement; and

- (f) After the date of the first Commercial Discovery, Contractor shall seek the approval of GNPC, which approval shall not be unreasonably withheld or delayed, on any proposal for the drilling of any further Exploration Well(s) not associated with the Commercial Discovery and not otherwise required to be drilled under Article 4.3. If approval is not secured by Contractor, Contractor may nevertheless elect to drill the Exploration Well(s) at its sole risk, and the costs of such Exploration Operations shall not be considered Petroleum Costs. However, such costs shall be Petroleum Costs for purposes of AOE if there arises a subsequent Commercial Discovery associated with such additional Exploration Operations. Any such subsequent Commercial Discovery shall be treated hereunder in the same manner as if such Commercial Discovery had been made in connection with operations that were not performed as sole risk operations, including participation by GNPC in such Commercial Discovery;
  - (g) Contractor shall, not later than one hundred and fifty (150) days after informing the Minister that a Discovery is a Commercial Discovery, submit a Development Plan for approval by the JMC. If the JMC does not approve a Development Plan within thirty (30) days of Contractor's submission, then Contractor shall submit the Development Plan proposed by Contractor to the Minister pursuant to Article 8.12. When the Minister approves the Development Plan pursuant to Article 8, such Development Plan shall be deemed approved by the JMC.
- 6.5 From the Date of Commercial Discovery, the JMC shall oversee Petroleum Operations as follows:
- (a) Within sixty (60) days after the Date of Commercial Discovery, Contractor shall prepare and submit to the JMC: (i) for approval any revisions to its annual Work Programme and budget that may be necessary in order to implement the Development Plan for the remainder of that Calendar Year; and (ii) with respect to the Contract Area (excluding the Discovery Area) an indication of Contractor's tentative plans for the rest of the Exploration Period;
  - (b) At least ninety (90) days before the commencement of each subsequent Calendar Year, Contractor shall submit to the JMC for review and approval a Work Programme and budget setting forth all Development and Production Operations which Contractor proposes to carry out in that Calendar Year and the estimated cost thereof, and shall also give an indication of Contractor's tentative plans for the succeeding Calendar Year. If a Work Programme and budget for the subsequent Calendar Year is not approved by the JMC by December 15, the JMC shall be deemed to have approved a Work Programme and budget for the subsequent Calendar Year submitted by Contractor that sets out those Petroleum Operations that



Contractor determines are: (i) consistent with the commitments of a previously approved Work Programme and budget for Development and Production Operations (if any); and (ii) reasonably necessary to keep this Agreement in full force and effect and to ensure the integrity of Petroleum Operations in accordance with International Oil Field Practice; and

- (c) Within sixty (60) days of the Date of Commencement of Commercial Production and thereafter not later than one hundred and twenty (120) days before the commencement of each subsequent Calendar Year, Contractor shall submit to the JMC for its approval an annual production schedule which shall be in accordance with International Oil Field Practice, and shall be designed to provide for the efficient, beneficial, and timely production of the Petroleum resources. If the annual production schedule for the subsequent Calendar Year is not approved by the JMC by December 15, then Contractor shall submit Contractor's annual production schedule for the subsequent Calendar Year to the Petroleum Commission.
- 6.6 For purposes of Articles 6.4 and 6.5, commitments and expenditures with respect to any line item of an approved Work Programme and budget, Contractor shall be entitled to incur in connection with the corresponding Petroleum Operation, without further approval of the Joint Management Committee, a combined over-commitment and over-expenditure for such line item up to ten percent (10%) of the authorized amount for such line item; provided that the cumulative total of all over-commitments and over-expenditures for a Calendar Year shall not exceed five percent (5%) of the total annual Work Programme and budget in question.
- 6.7 Supplementary agreements provided for under Article 10.7, which shall include lifting procedures for Development and Production Areas, shall be subject to JMC approval.
- 6.8 The JMC shall review all reports submitted by Contractor pursuant to this Article 6 on the conduct of Petroleum Operations.
- 6.9 Contractor's insurance programme and the programmes for training and technology transfer shall be subject to JMC review.
- 6.10 Any contract to be entered into or awarded by Contractor for the provision of services for Petroleum Operations must comply with the provisions of Article 20, and shall be subject to: (a) JMC approved relevant contracting and tendering procedures, which shall be approved by the JMC within thirty (30) days of the Effective Date; and (b) approval by the JMC. At the first JMC meeting, the JMC shall approve the applicable contract monetary value above which the award of contracts shall be subject to JMC approval. The applicable contract monetary value shall be such as would allow the Operator to conduct Petroleum Operations in a timely and efficient manner. GNPC shall treat such contracts as confidential pursuant to Article 16.4, except as required by applicable law; provided that GNPC shall not disclose such contracts under Article 16.4(a)(ii). If the relevant tendering procedures

proposed by Contractor are not approved by the JMC within thirty (30) days, then such tendering procedures shall be deemed approved by the JMC. Notwithstanding the foregoing, any contract entered into or awarded by Contractor within thirty (30) days of the Effective Date shall not be subject to JMC approved relevant tendering procedures.

- 6.11 If during any meeting of the JMC the JMC members are unable to reach agreement concerning any of the matters requiring approval pursuant to Article 6.3(d), the matter shall be deferred for reconsideration at a further meeting to be held not later than fifteen (15) days following the original meeting; provided that between the original meeting and the further meeting, senior personnel authorized by Contractor and GNPC shall seek to resolve any such matter. If at such further meeting GNPC and Contractor are still unable to reach agreement, the matter in dispute shall, at the request of either GNPC or Contractor, be referred for resolution by a Sole Expert under Article 24.8, unless GNPC and Contractor agree that such dispute should be submitted to arbitration pursuant to Article 24.

## Article 7

### **RIGHTS AND OBLIGATIONS OF CONTRACTOR AND GNPC**

- 7.1 Subject to the provisions of this Agreement, Contractor shall be responsible for the conduct of Petroleum Operations and shall perform its obligations in accordance with International Oil Field Practice, including without prejudice to the generality of the foregoing:
- (a) conduct Petroleum Operations diligently in accordance with International Oil Field Practice, observing sound technical and engineering practices using appropriate advanced technology and effective equipment, machinery, materials, and methods;
  - (b) take all reasonable steps to ensure compliance with Section 50 of the Petroleum Law, including ensuring the recovery and prevention of waste of Petroleum in the Contract Area in accordance with International Oil Field Practice;
  - (c) prepare and maintain in Ghana full and accurate records of all Petroleum Operations performed under this Agreement;
  - (d) prepare and maintain accounts of all Petroleum Operations under this Agreement in such a manner as to present a full and accurate record of the costs of such Petroleum Operations, in accordance with the Accounting Guide;
  - (e) disclose to GNPC and the Minister all agreements among the Contractor Parties relating to the Petroleum Operations, which agreement shall not be inconsistent with the provisions of this Agreement; provided that: (i) GNPC and the Minister shall treat such agreements as confidential pursuant to Article 16.4, except as required by applicable law; and (ii) GNPC and the State shall not disclose such agreements under Article 16.4(a)(ii);
  - (f) implement a secondment programme to develop GNPC's institutional capacity to become a competent operator in accordance with Article 21.4
  - (g) subject to Article 2.7, provide and be solely responsible for the payment of all costs related or incidental to all services, equipment, and supplies necessary for the execution of the activities to be conducted by Contractor under this Agreement except as otherwise provided hereunder;
  - (h) prepare and submit in accordance with this Agreement for approval by the JMC: (i) the Development Plan; and (ii) such other matters as are specified in this Agreement as subject to approval by the JMC;
  - (i) take all measures consistent with International Oil Field Practice to: (i) control the flow and prevent loss or waste of Petroleum; (ii) prevent any

injurious ingress of water and damage to Petroleum bearing strata; and (iii) manage reservoir pressure;

- (j) not flare any Natural Gas except in accordance with Article 14.2;
- (k) keep the Minister, the Petroleum Commission, and GNPC promptly advised in writing of all material developments which occur, or the occurrence of which is reasonably foreseeable, affecting, or highly likely to affect Petroleum Operations;
- (l) take such steps in case of emergency, and make such immediate expenditures as are necessary in accordance with International Oil Field Practice, environmental, industrial hygiene, and safety legislation, and/or this Agreement for the protection of health, life, the environment, and property, and report in reasonable detail all such steps taken and expenditures made promptly to the Minister, the Petroleum Commission, and the JMC;
- (m) notify promptly the Minister, the Petroleum Commission, and GNPC if Contractor becomes aware of any unusual event or circumstance occurring in the Contract Area or such other areas where Contractor is undertaking activities contemplated under this Agreement that Contractor believes could reasonably be expected to adversely affect the environment; and
- (n) implement and administer contracts related to Petroleum Operations entered into by Contractor with its Affiliates on an arm's-length basis; and
- (o) maintain or decommission, as appropriate, all existing facilities and assets, and all other assets used or held for use in connection with Petroleum Operations in accordance with International Oil Field Practice, applicable law, and this Agreement.

7.2 In connection with its performance of Petroleum Operations, Contractor shall have the right within the terms of and pursuant to applicable law and regulations to:

- (a) establish offices in Ghana and to assign to those offices such representatives as it shall consider necessary for the purposes of this Agreement;
- (b) use public lands for installation and operation of shore bases, and terminals, harbours, and related facilities, petroleum storage and processing, pipelines from fields to terminals and delivery facilities, and camps and other housing;
- (c) receive licenses and permission to install and operate such communications, Petroleum production, processing, storage facilities, transportation facilities (to the Delivery Point), and other facilities as may be necessary for the efficiency of its operations;

- (d) give first consideration to Ghanaians with the requisite qualifications, training, and experience before bringing to Ghana such number of Foreign National Employees as may be necessary for its operations, including employees assigned on permanent or resident status, with or without families, as well as those assigned on temporary basis, such as rotational employees, in accordance with the Local Content Regulations;
  - (e) provide or arrange for reasonable housing, schooling, and other amenities, permanent and temporary, for its employees and to import personal and household effects, furniture, and vehicles, for the use of its personnel in Ghana;
  - (f) be solely responsible for provision of health, accident, pension, and life insurance benefit plans of its Foreign National Employees and their families; and such employees shall not be required to participate in any insurance, compensation, or other employee or social benefit programs established in Ghana;
  - (g) have, together with its personnel, at all times the right of ingress to and egress from its offices in Ghana, the Contract Area, and the facilities associated with Petroleum Operations hereunder in Ghana including the offshore waters, using its owned or chartered means of land, sea, and air transportation; and
  - (h) engage such Subcontractors, expatriate and national, including also consultants, and bring such Subcontractors and their personnel to Ghana as are necessary in order to carry out the Petroleum Operations in accordance with International Oil Field Practices; and said Subcontractors shall have the same rights as Contractor specified in this Article 7.1(o) to the extent they are engaged by Contractor for the Petroleum Operations hereunder.
- 7.3 GNPC shall use its best efforts to assist Contractor in carrying out Contractor's obligations expeditiously and efficiently, as stipulated in this Agreement, and in particular GNPC shall use its best efforts to assist Contractor and its Subcontractors, as long as Contractor and its Subcontractors use their reasonable efforts to appropriately complete procedures and requirements under applicable law, to:
- (a) establish supply bases and obtain necessary communications facilities, equipment, and supplies;
  - (b) obtain necessary approvals to open bank accounts in Ghana;
  - (c) subject to Article 21 hereof, obtain entry visas and work permits, or any other documentation that may be required, for such number of Foreign National Employees of Contractor and its Subcontractors engaged in Petroleum Operations and members of their families who will be resident in Ghana, and make arrangements for their travel, arrival, medical services, and other necessary amenities;

- (d) comply with Ghana customs procedures and obtain permits for the importation of necessary materials;
  - (e) obtain the necessary permits to transport documents, samples or other forms of data to foreign countries for the purpose of analysis or processing if such is deemed necessary by Contractor for the purposes of Petroleum Operations;
  - (f) acquire any approvals or waivers required from any State agencies or other ministerial or regulatory bodies under the direct or indirect control of the State, including those State agencies or other ministerial or regulatory bodies dealing with fishing, meteorology, navigation, environment, and communications, as required;
  - (g) in accordance with Article 21.3, identify Ghanaian personnel as candidates for employment by Contractor in Petroleum Operations; and
  - (h) procure access, on competitive commercial terms to infrastructure owned by the State, GNPC (or its Affiliates), or any third party, including facilities owned or used by contractors on oil and gas blocks adjacent to the Contract Area.
- 7.4 All reasonable and documented expenses incurred by GNPC in connection with any of the matters set out in Article 7.3 shall be borne by Contractor in accordance with this Agreement.
- 7.5 GNPC shall use its best efforts to render assistance to Contractor in emergencies and major accidents, and such other assistance as may be requested by Contractor, provided that any reasonable expenses involved in such assistance shall be borne by Contractor in accordance with this Agreement.
- 7.6 Subject to the provisions of this Agreement and save for Petroleum Operations undertaken by GNPC pursuant to 11, Contractor shall, during the term of this Agreement obtain and maintain insurance for and in relation to Petroleum Operations as required by Ghanaian law. Subject to approval of the National Insurance Commission pursuant to the Local Content Regulations, Contractor may satisfy such insurance obligations through self-insurance. Contractor shall within two (2) Months of the date of policy or renewal furnish to the Minister and the Petroleum Commission evidence that such coverage is in effect. Such insurance policies shall cover the interest of GNPC as additional insured and shall waive subrogation against GNPC. For the avoidance of doubt, there shall be no coverage for liabilities arising out of or in connection with GNPC's conduct. The said insurance shall, without prejudice to the generality of the foregoing, cover:
- (a) loss or damage to all installations, equipment and other assets for so long as they are used in or in connection with Petroleum Operations; provided, however, that if for any reason the Contractor fails to insure any such

installation, equipment or assets, it shall replace any loss thereof or repair any damage caused thereto;

- (b) loss, damage or injury caused by pollution in the course of or as a result of Petroleum Operations;
- (c) loss of property or damage or bodily injury suffered by any third party in the course of or as a result of Petroleum Operations for which the Contractor may be liable;
- (d) any claim for which the State may be liable relating to the loss of property or damage or bodily injury suffered by any third party in the course of or as a result of Petroleum Operations for which the Contractor is liable to indemnify the State;
- (e) with respect to Petroleum Operations offshore, the cost of removing wrecks and cleaning up operations following any accident in the course of or as a result of Petroleum Operations; and
- (f) the Contractor's and/or the Operator's liability to its employees engaged in Petroleum Operations.

- 7.7 Contractor shall require its Subcontractors to obtain and maintain insurance pursuant to Article 7.6 relating mutatis mutandis to such Subcontractors.
- 7.8 Contractor shall indemnify and hold harmless the State and GNPC against all third party claims, losses, and damages of any nature directly caused by or resulting from the Gross Negligence / Wilful Misconduct of Contractor.
- 7.9 Under no circumstances shall Contractor be required to utilize local brokers except in accordance with the Local Content Regulations.
- 7.10 No third party shall be granted access to the Contract Area for the purposes of exploration for and production of natural resources other than petroleum unless such third party has entered into an indemnity agreement with Contractor.
- 7.11 No third party (for the avoidance of doubt, a party that is not an Affiliate of Contractor) shall be allowed to use any Contractor owned or operated facility unless such third party has entered into an agreement with Contractor. The tariff rates and other conditions agreed between the third party and Contractor shall not be modified by the Petroleum Commission or the Minister without Contractor's agreement which shall not be unreasonably withheld or delayed.



## Article 8

### COMMERCIALITY

- 8.1 Contractor shall submit a Discovery Notice to the Minister, the Petroleum Commission, as soon as possible after any Discovery is made, but in any event not later than two (2) days after such Discovery is made.
- 8.2 As soon as possible after the analysis of the test results of such Discovery is complete, and in any event not later than one hundred (100) days from the date of such Discovery, Contractor shall by a further notice in writing to the Minister, the Petroleum Commission, and GNPC, indicate whether in the opinion of Contractor the Discovery merits Appraisal.
- 8.3 Where Contractor does not make the indication required by Article 8.2 within the period indicated or indicates that the Discovery does not merit Appraisal, Contractor shall, subject to Articles 8.17 and 8.21, relinquish the Discovery Area associated with the Discovery.
- 8.4 Where Contractor indicates that the Discovery merits Appraisal pursuant to Article 8.2, Contractor shall within one hundred and eighty (180) days from the date of the Discovery Notice notify the Minister and submit to the Petroleum Commission for approval (and to the Minister for information purposes) a Proposed Appraisal Programme to be carried out by Contractor in respect of such Discovery. For the avoidance of doubt, unless otherwise instructed by the Petroleum Commission, Contractor shall conduct a separate Appraisal for each Discovery where Contractor indicates that such Discovery merits Appraisal.
- 8.5 The Petroleum Commission shall within sixty (60) days of submission of the Proposed Appraisal Programme, give Contractor a notice in writing stating:
  - (a) whether the Proposed Appraisal Programme has been approved (outright or conditionally) or not;
  - (b) if not approved, any revisions or improvements required by the Petroleum Commission to be made to the Proposed Appraisal Programme, and the reasons therefor; or
  - (c) if conditionally approved, the conditions to the approval of the Proposed Appraisal Programme, and the reasons therefor.

If the Petroleum Commission fails to provide such notice after such sixty (60) day period, such Proposed Appraisal Programme shall be deemed approved.

If the Petroleum Commission notifies Contractor that the Proposed Appraisal Programme is not approved or Contractor notifies the Petroleum Commission that it does not accept the revisions or conditions required for any approval pursuant to



this Article 8.5, the Petroleum Commission and Contractor shall consult within fifteen (15) days of the date of the notice by the Petroleum Commission, with a view to amending the Proposed Appraisal Programme to be acceptable to both the Petroleum Commission and Contractor. Should the Petroleum Commission not agree to so consult or should the Petroleum Commission and Contractor fail to agree changes required for such approval within fourteen (14) days following said consultation, Contractor may notify the Minister and request resolution. If the Minister is unable to resolve the matter in a manner agreeable to the Petroleum Commission, GNPC, and Contractor within thirty (30) days from the date of such notification to the Minister, then the Proposed Appraisal Program submitted by Contractor shall be deemed approved.

8.6 Where Contractor seeks to amend an Appraisal Programme, it shall submit such amendment to the JMC for review pursuant to Article 6.4((e) before submission to the Petroleum Commission for approval.

8.7 Unless Contractor and the Petroleum Commission otherwise agree, Contractor shall have a period of two (2) Years from the date of Discovery to complete the Appraisal Programme. In the event Contractor requires a period of more than two (2) Years to complete the Appraisal Programme, Contractor shall submit a request to the Petroleum Commission for an extension, with a firm programme with timelines to justify the request, and the Petroleum Commission shall recommend that the Minister approve Contractor's request for an extension.

8.8 Contractor shall commence Appraisal within one hundred and fifty (150) days from the date of approval of the Appraisal Programme by the Petroleum Commission pursuant to Article 8.5. Where Contractor is unable to commence or otherwise fails to commence Appraisal within one hundred and fifty (150) days from the date of approval of the Appraisal Programme, GNPC shall be entitled to exercise the option provided for in Article Article 9 to enable prompt Appraisal unless: (a) the delay is due to Force Majeure; or (b) Contractor has commenced Appraisal or obtained an extension of time for such Appraisal, provided that if Contractor obtains an extension of time for such Appraisal and has not commenced Appraisal prior to the end of such extension, GNPC shall be entitled to exercise the option provided for in Article Article 9 to enable prompt Appraisal.

8.9 Not later than ninety (90) days from the date on which said Appraisal Programme relating to the Discovery is completed, Contractor will submit to the Minister and the Petroleum Commission a report containing the results of the Appraisal Programme. Such report shall include all available technical and economic data relevant to a determination of commerciality, including geological and geophysical conditions, such as structural configuration, physical properties and the extent of reservoir rocks, areas, thickness and depth of pay zones, pressure, volume, and temperature analysis of the reservoir fluids, preliminary estimates of Crude Oil and/or Natural Gas reserves, recovery drive characteristics, anticipated production

performance per reservoir and per well, fluid characteristics, including gravity, sulphur percentage, sediment and water percentage, and refinery assay pattern; provided that Contractor makes no representations about the accuracy of its identification of reserves and that each Party retains full responsibility for making its own assessment of reserves for internal and reporting purposes.

- 8.10 Not later than ninety (90) days from the date on which said Appraisal Programme is completed, Contractor shall, by a further notice in writing, inform the Petroleum Commission and the Minister whether the Discovery, in the opinion of Contractor, is or is not a Commercial Discovery.
- 8.11 If Contractor fails to notify the Minister and the Petroleum Commission as provided in Article 8.9 or informs the Minister that the Discovery is not a Commercial Discovery, then subject to Articles 8.17 and 8.21, Contractor shall relinquish such Discovery Area; provided, however, that in appropriate cases, before declaring that a Discovery is not a Commercial Discovery, Contractor may consult with the other Parties and may make appropriate representations proposing minor changes in the fiscal and other provisions of this Agreement which may, in the opinion of Contractor, affect the determination of commerciality. The other Parties may, where feasible, and in the best interests of the Parties, agree to make such changes or modifications in the existing arrangements.
- 8.12 If Contractor pursuant to Article 8.10 informs the Minister that the Discovery is a Commercial Discovery, Contractor shall, not later than one hundred and eighty (180) days thereafter submit a Development Plan to the Minister.
- 8.13 The Development Plan referred to in Article 8.12 shall be based on detailed engineering studies and shall include:
  - (a) Contractor's proposals for the delineation of the proposed Development and Production Area and for the development of any reservoir(s), including the method for the disposal of Associated Gas in accordance with the provisions of Part II of Article 14.17;
  - (b) the way in which the Development and Production of the reservoir is planned to be financed;
  - (c) Contractor's proposals relating to the spacing, drilling, and completion of wells, the production, storage, processing, transportation, gas utilization, delivery facilities, and necessary infrastructure developments required for the production, storage, and transportation (to the Delivery Point) of the Petroleum, including:
    - i) the estimated number, size, and production capacity of production facilities, if any;

- ii) the estimated number of Production wells;
  - iii) the particulars of feasible alternatives for transportation of the Petroleum, including pipelines;
  - iv) the particulars of onshore installations required, including the type and specifications or size thereof; and
  - v) the particulars of other technical equipment required for the operations;
- (d) the estimate of the reserves together with the estimated annual production profiles throughout the life of the field to be developed pursuant to the Development Plan for Crude Oil and Natural Gas from the Petroleum reservoirs, provided that Contractor makes no representations about the accuracy of its identification of reserves and that each Party retains full responsibility for making its own assessment of reserves for internal and reporting purposes;
- (e) tie-ins with other Petroleum fields (where applicable);
- (f) information on operation and maintenance;
- (g) a description of technical solutions, including enhanced recovery methods;
- (h) estimates of capital and operating expenditures;
- (i) economic feasibility studies carried out by or for Contractor in respect of alternative methods for Development of the Discovery, taking into account:
- i) location;
  - ii) water depth (where applicable);
  - iii) meteorological conditions;
  - iv) estimates of capital and operating expenditures; and
  - v) any other relevant data and evaluation thereof;
- (j) safety measures to be adopted in the course of the Development and Production Operations, including measures to deal with emergencies;
- (k) environmental impact assessments as required by the applicable laws of Ghana;
- (l) measures to protect the environment and a contingency plan for handling emergencies (including the provision and maintenance of equipment stockpiles to respond to an emergency);

- (m) Contractor's proposals with respect to the procurement of goods and services obtainable in Ghana;
  - (n) Contractor's technology transfer plan;
  - (o) Contractor's plan for training and employment of Ghanaian nationals;
  - (p) timetable for effecting Development Operations; and
  - (q) a plan for decommissioning and abandonment.
- 8.14 The date of the Minister's approval of the Development Plan pursuant to Articles 8.15, 8.16, or 8.17 shall be the Date of Commercial Discovery.
- 8.15 The Minister shall, within the ninety (90) days following submission of the Development Plan, give Contractor a notice in writing stating whether or not the Development Plan as submitted has been approved or:
- (a) if not approved, any revisions proposed by the Minister to the Development Plan as submitted, and the reasons thereof; or
  - (b) if conditionally approved, any conditions pursuant to which the Development Plan is approved.

If the Minister fails to provide notice pursuant to Articles 8.15(a) or 8.15(b) within the ninety (90) day time period described above, then the Development Plan shall be deemed approved.

Where the Minister notifies Contractor that the Development Plan is not approved, the Minister and Contractor shall, within a period of thirty (30) days from the date of such notice by the Minister, consult (and shall include GNPC in such consultations) with a view to amending the Development Plan to be acceptable to both the Minister and Contractor. Should the Minister not agree to so consult or should the Minister and Contractor fail to agree changes required for such approval within fourteen (14) days following said thirty (30) day period, the resulting dispute arising out of this Article 8.15 shall be resolved in accordance with Article 24.8.

- 8.16 Where the issue in dispute referred for resolution pursuant to Article 24 is finally decided in favour of Contractor, the Minister shall forthwith give the requisite approval to the Development Plan submitted by Contractor.
- 8.17 Where the issue in dispute referred for resolution pursuant to Article 24 is finally decided in favour of the Minister, in whole or in part, Contractor shall forthwith:
- (a) amend the proposed Development Plan to give effect to the final decision rendered under Article 24, and the Minister shall give the requisite approval to such revised Development Plan; or

- (b) subject to Articles 8.18 and 8.19 below, relinquish the Discovery Area.
- 8.18 Notwithstanding the relinquishment provisions of Articles 8.3 and 8.11 above, if Contractor indicates that a Discovery does not merit immediate Appraisal, or after Appraisal does not appear conclusively to be a Commercial Discovery but may merit Appraisal or potentially become a Commercial Discovery at a later date during the Exploration Period, then Contractor shall not need to relinquish the Discovery Area and may continue its Exploration Operations in the Contract Area during the Exploration Period; provided that Contractor shall explain to the Minister and the Petroleum Commission what additional evaluations, including Exploration work or studies, are or may be planned in order to determine whether subsequent Appraisal is warranted or that the Discovery is a Commercial Discovery, and the Minister shall approve of any such non-relinquishment. Such evaluations shall be performed by Contractor according to a specific timetable (which shall not exceed the time frame specified under Article 8.19) to be approved by the JMC and the Petroleum Commission. After completion of the evaluations, Contractor shall make the indications called for under Articles 8.3 or 8.11 and either proceed with Appraisal, confirm the Discovery is a Commercial Discovery, or relinquish the Discovery Area.
- 8.19 In any case, if a Discovery is made in the Initial Exploration Period or First Extension Period, Contractor shall by the end of the subsequent phase (that is the First Extension Period or Second Extension Period as the case may be), take a decision to Appraise the Discovery or relinquish such Discovery. Likewise, if Contractor has completed the Appraisal of a Discovery in the Initial Exploration Period or First Extension Period, the Contractor shall by the end of the subsequent phase (that is, the First Extension Period or Second Extension Period as the case may be), take a decision to determine if such Discovery is a Commercial Discovery or relinquish such Discovery. In any event, if at the end of the Exploration Period Contractor has not indicated its intent to proceed with an Appraisal Programme or informed the Petroleum Commission and the Minister that the Discovery is a Commercial Discovery, then the Discovery Area shall be relinquished.
- 8.20 Upon completion of an Appraisal Programme and before Contractor makes a determination that any Discovery is not a Commercial Discovery, Contractor may consult with the other Parties and may make appropriate representations proposing minor changes in the fiscal and other provisions of this Agreement which may, in the opinion of Contractor, affect the determination of a Commercial Discovery. The other Parties may agree to make such changes or modifications in the existing arrangements. In the event the Parties do not agree on such changes or modifications, then subject to Articles 8.18 and 8.19, Contractor shall relinquish the Discovery Area.
- 8.21 Nothing in Articles 8.3, 8.11, 8.18, 8.19, or 9.2 shall be read or construed as requiring Contractor to relinquish:

- (a) any area which constitutes or forms part of another Discovery Area in respect of which:
  - i) Contractor has given the Minister, the Petroleum Commission, and GNPC a separate notice stating that such Discovery merits Appraisal in accordance with Article 8.1; or
  - ii) Contractor has given the Petroleum Commission and the Minister a separate notice indicating that such Discovery is a Commercial Discovery in accordance with Article 8.10; or

- (b) any area which constitutes or forms part of a Development and Production Area.

8.22 For the avoidance of doubt, where Contractor makes a Discovery after the expiration of the Exploration Period Contractor shall notify the Minister of such Discovery pursuant to Article 8.1 and, subject to its rights under Article 3, surrender such Discovery to GNPC.

(a) In the event a field determined to be commercial by Contractor extends beyond the boundaries of the Contract Area, the Minister may require Contractor and GNPC to exploit the field in association with the third party holding the rights and obligations under a petroleum agreement covering the said field (or GNPC as the case may be). The exploitation in association with said third party and GNPC shall be pursuant to good unitization and engineering principles and in accordance with International Oil Field Practice. Contractor, GNPC, and the third party shall agree a time period in which they will execute a unitization and unit operating agreement. Such unitization and unit operating agreement shall be based on the most recent version of the Association of International Petroleum Negotiators model unitization and unit operating agreement. In the event Contractor, GNPC, and said third party are unable to either agree to the time period in which to execute the unitization and operating agreement or execute the unitization and unit operating agreement within an agreed time period, Contractor shall notify the Minister in writing and the Minister shall give appropriate directions to Contractor, GNPC, and the third party to resolve the matter in accordance with International Oil Field Practice.

- (b) Contractor, GNPC, and the third party holding an interest in the adjacent block shall submit a joint development and production plan to the Minister after execution of the unitization and unit operating agreement, which submission shall be within the time period agreed to among Contractor, GNPC, and the third party holding an interest in the adjacent area. The joint development and production plan shall include, mutatis mutandis, the information required by Article 8.13 for a Development Plan, and the Minister's approval of such joint development and production plan shall be, mutatis mutandis, pursuant to Articles 8.15 through 8.17.

- 8.23 All notices required to be submitted to the Minister under this Article 8 shall be copied to the Petroleum Commission.
- 8.24 In the event the Minister or the Petroleum Commission seek to modify Contractor's long term production schedule, as set forth in the approved Development Plan, or annual production rate, Contractor shall be consulted prior to such modification, and, to the extent such modification would result in a reduction in the annual production rate, the Minister shall apply the reduction in a non-discriminatory manner to all producing fields in proportion to their annual production rates.



## Article 9

### SOLE RISK ACCOUNT

- 9.1 Subject to Contractor's rights under Article 8, GNPC may notify Contractor that it will, at its Sole Risk, commence to appraise a Discovery pursuant to Article 8.8, provided that within thirty (30) days of such notification from GNPC, Contractor may elect to commence to appraise that Discovery within its own Work Programme.
- 9.2 Notwithstanding anything to the contrary in this Agreement:
- (a) Except for Sole Risk undertaken pursuant to Article 9.1, GNPC shall not conduct any Sole Risk: (i) during the Initial Exploration Period; (ii) within a Discovery Area; or (iii) within a Development and Production Area; and
  - (b) a Sole Risk to penetrate and test horizons deeper than the agreed well depth under Article 9.4 or drill an Exploration Well under Article 9.8 shall not be conducted if: (i) employing International Oil Field Practice, such operations are not technically feasible or cannot be conducted in a safe and prudent manner, as determined by Contractor; (ii) such operations may unreasonably or unduly interfere or delay Contractor's Petroleum Operations, or may result in additional costs to Contractor; (iii) such operations may have a detrimental effect on the proper performance of Contractor's Work Programme; or (iv) the objective is to drill a well and/or test a horizon in which Contractor has made a Discovery or in which Contractor has identified as being prospective or considered drilling to during the Exploration Period in the Contract Area.
- 9.3 Where an Appraisal undertaken under Article Article 9 at the Sole Risk of GNPC results in a determination by GNPC that a Discovery is a Commercial Discovery, Contractor may develop the Commercial Discovery upon reimbursement to GNPC of all expenses incurred in undertaking the Appraisal and after arranging with GNPC satisfactory terms for the payment of a premium equivalent to seven hundred percent (700%) of such expenses. Such premium shall not be counted as Petroleum Costs. In the event that Contractor declines to develop said Discovery, Contractor shall, subject to Article 8.21, relinquish the Sole Risk Development and Production Area established by the Appraisal Programme conducted by GNPC under Article Article 9.
- 9.4 During the Exploration Period and subject to Article 9.2, GNPC may, at its Sole Risk, request Contractor to continue drilling to penetrate and test horizons deeper than those contained in the Work Programme of Contractor or required under 0. GNPC may also at its Sole Risk request Contractor to test a zone or zones which Contractor has not included in Contractor's test programme. Notice of this request shall be given to Contractor in writing as early as possible prior to or during the drilling of the well, but in any case



not after Contractor has begun work to complete or abandon the well. The exercise by GNPC of this right shall be in an agreed manner (such agreement not to be unreasonably withheld or delayed by Contractor) which does not prevent Contractor from complying with its work obligations under Article 4.3.

- 9.5 Upon receipt of a request from GNPC under Article 9.4, Contractor shall promptly notify GNPC of the estimated financial requirements to conduct the Sole Risk on GNPC's behalf and shall provide GNPC a copy of such estimate. GNPC shall make financial arrangements satisfactory to Contractor, failing which GNPC shall no longer have the right to conduct such Sole Risk. Contractor shall not be obligated to commence the Sole Risk on GNPC's behalf until GNPC has made financial arrangements satisfactory to Contractor. Stand-by costs incurred for the drilling rig and other services, equipment, and Subcontractors for the sole purpose of the Sole Risk drilling, pending satisfactory financial arrangements, shall be borne and paid by GNPC.
- 9.6 At any time before commencing such deeper drilling under Article 9.3 above, Contractor may elect to incorporate the required deeper drilling in its own Exploration Operation, in which case any resulting Discovery shall not be affected by the provisions of this 11.
- 9.7 Where any Sole Risk deeper drilling pursuant to Article 9.4 results in a Discovery, GNPC shall have the right, at its Sole Risk, to appraise, develop, produce, and dispose of all Petroleum resulting from such Sole Risk deeper drilling and shall conduct such Sole Risk unless GNPC proposes otherwise and Contractor agrees. Provided, however, that if at the time such Petroleum is tested from the producing horizon in a well:
- (a) Contractor's Work Programme includes a well or wells to be drilled to the same producing horizon, and provided that the well or wells drilled by Contractor result(s) in a Petroleum producing well producing from the same horizon, Contractor shall, after reimbursing GNPC for all costs associated with its Sole Risk deeper drilling and testing in said well, have the right to include production from that well in its total production for the purposes of establishing a Commercial Discovery, and, if a Commercial Discovery is subsequently established, to develop, produce, and dispose of the Petroleum in accordance with the provisions of this Agreement; or
  - (b) Contractor's Work Programme does not include a well to be drilled to the same producing horizon, Contractor has the option to appraise and /or develop, as the case may be, the Discovery for its account under the terms of this Agreement if it so elects within a period of sixty (60) days after such Discovery. In such case, Contractor shall reimburse GNPC for all expenses incurred by GNPC in connection with such Sole Risk, and shall make satisfactory arrangements with GNPC for the payment of a premium

equivalent to seven hundred percent (700%) of such expenses. Such premium shall not be considered as Petroleum Costs.

- 9.8 During the term of this Agreement and subject to Article 9.2, GNPC shall have the right to submit a Work Programme to the JMC to drill, at its Sole Risk, a reasonable number of wells in the Contract Area provided that the work intended to be done by GNPC had not been scheduled for a Work Programme to be performed by Contractor and the exercise of such right by GNPC and the arrangements made by GNPC for undertaking such drilling do not prevent Contractor carrying out Petroleum Operations. Within thirty (30) days after receipt of such notice, Contractor may elect to drill the proposed well(s) as part of Contractor's Exploration Operations or may elect to participate in the well to be drilled by GNPC.
- 9.9 In the event that a well drilled at the Sole Risk of GNPC in accordance with Article 9.8 above results in a Discovery, GNPC shall notify Contractor in writing, and GNPC shall have the right to appraise such Discovery and develop or request Contractor to develop, after GNPC declares a Commercial Discovery, which Contractor may decline in its sole and absolute discretion, such Discovery for a mutually agreed reasonable service fee, GNPC taking all the interest, risk, and costs and hence having the right to all Petroleum produced from the Commercial Discovery; provided, however, that Contractor has the option to appraise and/or develop, as the case may be, the Discovery for its account under the terms of this Agreement if it so elects within a period of sixty (60) days after receipt of GNPC's written notice of such Discovery.
- (a) In the event that Contractor elects to appraise and/or develop, as the case may be, the Discovery for its own account, Contractor shall reimburse GNPC for all expenses incurred by GNPC in connection with such Sole Risk, and shall make satisfactory arrangements with GNPC for the payment of a premium equivalent to seven hundred percent (700%) of such expenses before exercising the option under this Article 9.9. Such premium shall not be considered as Petroleum Costs.
- (b) In the event that Contractor declines to exercise its option in this Article 9.9, Contractor shall, subject to Article 8.21, relinquish the Sole Risk Development and Production Area associated with such Commercial Discovery.
- 9.10 Sole Risk under this 11 shall not extend the Exploration Period or the term of this Agreement, and unless completion of such work would be impossible, impracticable, or imprudent in accordance with International Oil Field Practice, Contractor shall complete any agreed programme of work commenced by it under this Article at GNPC's Sole Risk, and subject to such provisions hereof as the Parties shall then agree, even though the Exploration Period as defined in Article 3 or the term of this Agreement may have expired.

9.11 Notwithstanding anything to the contrary in this Agreement, GNPC shall indemnify and hold harmless Contractor against all actions, claims, demands, and proceedings whatsoever brought by any third party or the State, arising out of or in connection with Sole Risk under this 11, including environmental damage, reservoir damage, consequential, special, indirect, punitive, or exemplary damages, even though caused in whole or in part by a pre-existing defect, or the negligence (whether sole, joint, or concurrent), Gross Negligence / Wilful Misconduct, strict liability, or other legal fault of any Contractor Party.

## Article 10

### SHARING OF CRUDE OIL

- 10.1 Gross Production of Crude Oil from each Development and Production Area shall (subject to a Calendar Year adjustment developed under the provisions of Article 10.7) be distributed amongst the Parties in the following sequence and proportions:
- (a) Ten percent (10%) of the Gross Production of Crude Oil shall be delivered to the State as **ROYALTY**, pursuant to the provisions of the Petroleum Law. Upon notice to Contractor, the State shall have the right to elect to receive cash in lieu of its Royalty share of such Crude Oil. The State's notice shall be given to Contractor at least ninety (90) days in advance of each lifting period, such periods to be established pursuant to the provisions of Article 10.7. In such case, said share of Crude Oil shall be delivered to Contractor, and Contractor shall pay to the State, within fifteen (15) days after the aggregated Market Price information is provided pursuant to Article 11.8, the value of said share in cash at the Market Price for the Month in which such lifting occurred;
  - (b) After distribution of such amounts of Crude Oil as are required pursuant to Article Article 10((a), the amount of Crude Oil, if any, shall be distributed to GNPC, subject to Article Article 10(**Error! Reference source not found.** below, to the extent it is entitled for Sole Risk under 11;
  - (c) After distribution of such amounts of Crude Oil as are required pursuant to Articles Article 10((a) and Article 10((b), the remaining Crude Oil produced from each Development and Production Area shall be distributed to Contractor and, subject to Article Article 10(**Error! Reference source not found.** below, to GNPC on the basis of their respective interests pursuant to Article 2 (unless the Contractor Parties agree otherwise);
  - (d) The State's AOE, if any, shall be distributed to the State out of Contractor's share of Crude Oil determined under Article Article 10(c(c). The State shall also have the right to elect to receive cash in lieu of the AOE share of Crude Oil accorded to it pursuant to Article 10.2. Notification of said election shall be given in the same notice in which the State notifies Contractor of its election to receive cash in lieu of Crude Oil under Article Article 10((a). In such case, said share of Crude Oil shall be delivered to Contractor, and Contractor shall pay to the State, within fifteen (15) days after the aggregated Market Price information is provided pursuant to Article 11.8, the value of said share in cash at the Market Price for the Month in which such lifting occurred

To assist in the distribution of Crude Oil in accordance with Article 10.1, there is attached as Annex 4 to this Agreement a worked example of the

calculation using hypothetical figures, rates, and thresholds, for the purpose of illustration only.

- 10.2 At any time the State shall be entitled to a portion of Contractor's share of Crude Oil then being produced from each separate Development and Production Area ("AOE") on the basis of the after-tax post-inflation-adjusted rate of return ("ROR") which Contractor has achieved with respect to such Development and Production Area as of that time. Contractor's ROR shall be calculated on its NCF and shall be determined separately for each Development and Production Area at the end of each Month in accordance with the following computation:

- (a) Definitions:

"NCF" means Contractor's net cash flow for the Month for which the calculation is being made, and shall be computed in accordance with the following formula:

$$\text{NCF} = x - y - z$$

where

"x" equals all revenues received during such Month by Contractor from the Development and Production Area, including an amount computed by multiplying the amount of Crude Oil taken by Contractor during such Month in accordance with Articles Article 10((c) and Article 10(**Error! Reference source not found.**), excluding such Crude Oil taken by Contractor for payment of interest in respect of Petroleum Costs incurred by Contractor on GNPC's behalf, by the Market Price applicable to such Crude Oil during the Month when lifted, plus any other proceeds specified in the Accounting Guide received by Contractor, including the proceeds from the sale of any assets to which Contractor continues to have title. For the avoidance of doubt, "x" shall not include revenues from Crude Oil lifted by Contractor which is part of another Party's entitlement (e.g., Royalty, Crude Oil relating to the State's AOE delivered to Contractor because the State has elected to receive cash in lieu of Crude Oil, Crude Oil purchased by Contractor from GNPC or the State), but shall include revenues from Crude Oil owned by Contractor but lifted by another Party (e.g., Crude Oil purchased by GNPC or the State from Contractor).

"y" equals one-twelfth ( $1/12$ ) of the income tax paid by Contractor to the State with respect to the Calendar Year in respect of the Development and Production Area. If there are two (2) or more Development and Production Areas, the total income tax paid by Contractor in accordance with the Petroleum Income Tax Law shall for purposes of this calculation be allocated to the Development and Production Area on the basis of hypothetical tax calculations for the separate Development and Production Areas. The hypothetical tax calculation for each Development and Production Area shall be determined by allocating the total amount of tax

incurred for each Calendar Year by Contractor under the Petroleum Income Tax Law to each Development and Production Area based on the ratio that the chargeable income from a given Development and Production Area bears to the total chargeable income of Contractor. The chargeable income of Contractor is determined under section 2 of the Petroleum Income Tax Law, and the chargeable income of a Development and Production Area shall be calculated by deducting from the gross income derived from or allocated to that Development and Production Area those expenses deductible under section 3 of the Petroleum Income Tax Law which are reasonably allocable to that Development and Production Area, and with respect to the Development and Production Area with the earliest Date of Commencement of Commercial Production, those expenses deductible under section 3 of the Petroleum Income Tax Law which are not attributable to any Development and Production Area. A negative chargeable income for a Development and Production Area shall be treated as zero for purposes of this allocation, and not more (or less) than the total income tax paid by Contractor shall be allocated between the Development and Production Areas.

“z” equals all Petroleum Costs specified in the Accounting Guide and expended by Contractor during such Month or with respect to abandonment costs, those calculated in accordance with Article 12.11 or actually incurred, as the case may be, with respect to the Development and Production Area, including any Petroleum Costs paid by Contractor on GNPC’s behalf and not reimbursed by GNPC within the Month, provided that all Petroleum Costs for Exploration Operations not directly attributable to a specific Development and Production Area shall for purposes of this calculation be allocated to the Development and Production Area having the earliest Date of Commencement of Commercial Production. Where Petroleum Costs for Exploration Operations are not directly attributable to a specific Development and Production Area during a Month, but are directly attributable to a subsequently delineated Development and Production Area, then Contractor may elect either to maintain the original allocation or reallocate such Petroleum Costs to the newly delineated Development and Production Area to which they are directly attributable and provided further that for the purpose of the ROR calculation, Petroleum Costs shall not include any amounts in respect of interest on loans obtained for the purposes of carrying out Petroleum Operations.

“FA<sub>n</sub>”, “SA<sub>n</sub>”, “TA<sub>n</sub>”, and “YA<sub>n</sub>” mean first account, second account, third account and fourth account, respectively, and represent amounts as of the last day of the Month in question as determined by the formulae in Article 10.2(b) below.

“FA<sub>n-1</sub>”, “SA<sub>n-1</sub>”, “TA<sub>n-1</sub>”, and “YA<sub>n-1</sub>” respectively, mean the lesser of: (i) FA<sub>n</sub>, SA<sub>n</sub>, TA<sub>n</sub>, or YA<sub>n</sub>, as the case may be, as of the last day of the Month immediately preceding the Month in question; or (ii) zero. Stated otherwise, FA<sub>n-1</sub> shall equal FA<sub>n</sub> as of the last day of the Month immediately preceding

the Month in question if such  $FA_n$  was a negative number, but shall equal zero if such  $FA_n$  was a positive number. Likewise,  $SA_{n-1}$  shall equal  $SA_n$  as of the last day of the Month immediately preceding the Month in question if such  $SA_n$  was a negative number, but shall equal zero if such  $SA_n$  was a positive number. Likewise,  $TA_{n-1}$  shall equal  $TA_n$  as of the last day of the Month immediately preceding the Month in question if such  $TA_n$  was a negative number, but shall equal zero if such  $TA_n$  was a positive number. Likewise,  $YA_{n-1}$  shall equal  $YA_n$  as of the last day of the Month immediately preceding the Month in question if such  $YA_n$  was a negative number, but shall equal zero if such  $YA_n$  was a positive number. In the ROR calculation for the first Month of Petroleum Operations,  $FA_{n-1}$ ,  $SA_{n-1}$ ,  $TA_{n-1}$ , and  $YA_{n-1}$ , shall be zero.

“**i**” for the Month in question equals one (1) subtracted from the quotient of the United States Industrial Goods Wholesale Price Index (“**USIGWPI**”) for the Month that is two (2) Months before the Month in question (e.g., use August data for October’s computation), as first reported in the International Financial Statistics of the International Monetary Fund, divided by the USIGWPI for the same Month that is two (2) Months before the Month in question of the immediately preceding Calendar Year, as first reported in the International Financial Statistics of the International Monetary Fund. If the USIGWPI ceases to be published, a substitute U.S. Dollar-based price index shall be used, which is to be mutually agreed upon by the Parties.

“**n**” refers to the nth Month in question.

“**n-1**” refers to the Month immediately preceding the nth Month

(b) Formulae:

$$FA_n = \left( FA_{n-1} \left( 1 + \frac{(0.15 + i)}{12} \right) \right) + NCF$$

$$SA_n = \left( SA_{n-1} \left( 1 + \frac{(0.20 + i)}{12} \right) \right) + NCF$$

In the calculation of  $SA_n$  an amount shall be subtracted from NCF identical to the value of any AOE which would be due to the State if reference were made hereunder only to  $FA_n$ .

$$TA_n = \left( TA_{n-1} \left( 1 + \frac{(0.25 + i)}{12} \right) \right) + NCF$$

In the calculation of  $TA_n$  an amount shall be subtracted from NCF identical to the value of any AOE which would be due to the State if reference were made hereunder only to  $FA_n$  and  $SA_n$ .

$$YA_n = \left( YA_{n-1} \left( 1 + \frac{(0.30 + i)}{12} \right) \right) + NCF$$

In the calculation of  $YA_n$  an amount shall be subtracted from NCF identical to the value of any AOE which would be due to the State if reference were made hereunder only to  $FA_n$ ,  $SA_n$ , and  $TA_n$

(c) Prospective Application:

The State's AOE measured in Barrels of Crude Oil will be as follows:

i) If  $FA_n$ ,  $SA_n$ ,  $TA_n$ , and  $YA_n$ , are all negative, the State's AOE for the Month in question shall be zero;

ii) If  $FA_n$  is positive and  $SA_n$ ,  $TA_n$ , and  $YA_n$ , are all negative, the State's AOE for the Month in question shall be equal to the absolute amount resulting from the following monetary calculation:

Ten percent (10%) of  $FA_n$  for that Month divided by the Market Price as determined in accordance with Article 11.7.

iii) If both  $FA_n$  and  $SA_n$  are positive, but  $TA_n$ , and  $YA_n$  are negative, the State's AOE for the Month in question shall be equal to the absolute amount resulting from the following monetary calculation:

the aggregate of ten percent (10%) of  $FA_n$  for that Month plus fifteen percent (15%) of  $SA_n$  for that Month all divided by the Market Price, as determined in accordance with Article 11.7.

iv) If  $FA_n$ ,  $SA_n$ , and  $TA_n$  are all positive but  $YA_n$  is negative, the State's AOE for the Month in question shall be equal to the absolute amount resulting from the following monetary calculation:

the aggregate of ten percent (10%) of  $FA_n$  for that Month plus fifteen percent (15%) of  $SA_n$  for that Month plus twenty percent (20%) of  $TA_n$  for that Month all divided by the Market Price, as determined in accordance with Article 11.7.

v) If  $FA_n$ ,  $SA_n$ ,  $TA_n$ , and  $YA_n$  are all positive the State's AOE for the Month in question shall be equal to the absolute amount resulting from the following monetary calculation:

the aggregate of ten percent (10%) of  $FA_n$  for that Month plus fifteen percent (15%) of  $SA_n$  for that Month plus twenty percent (20%) of  $TA_n$  for that Month plus twenty five percent (25%) of  $YA_n$  for that Month all divided by the Market Price, as determined in accordance with Article 11.7.



- (d) The AOE calculations shall be made in U.S. Dollars with all non-dollar expenditures converted to U.S. Dollars in accordance with Section **Error! Reference source not found.** of the Accounting Guide. When the AOE calculation cannot be definitively made because of disagreement on the Market Price or any other factor in the formulae, then a provisional AOE calculation shall be made on the basis of Contractor's good faith estimates of such factors, and such provisional calculation shall be subject to correction and revision upon the conclusive determination of such factors, and appropriate retroactive adjustments shall be made.
- (e) The AOE shall be calculated on a Monthly basis, with the AOE to be paid commencing with the first Month following the Month in which  $FA_n$ ,  $SA_n$ ,  $TA_n$ , or  $YA_n$ , (as applicable) becomes positive. Because the precise amount of the AOE for a Calendar Year cannot be determined with certainty until after the end of that Calendar Year, deliveries (or payments in lieu) of the AOE with respect to a Month shall be made during such Calendar Year based upon Contractor's good faith estimates of the amounts owing, with any adjustments following the end of the Calendar Year to be settled pursuant to the procedures agreed pursuant to Article 10.7. Final calculations of the AOE shall be made within thirty (30) days following the filing by Contractor of the annual tax return for such Calendar Year pursuant to the Petroleum Income Tax Law and this Agreement, and the amount of the AOE shall be appropriately adjusted in the event of a subsequent adjustment of the amount of tax owing on such term.
- 10.3 GNPC shall act as agent for the State in the collection of all Petroleum accruing to the State under this 12, and delivery to GNPC by Contractor shall discharge Contractor's obligation to deliver the share of the State. All Crude Oil delivered or distributed under this Article 10 shall be at the Delivery Point.
- 10.4 The State or GNPC, having met the requirements of Article 15.1, may elect, in accordance with terms and conditions to be mutually agreed by the Parties, that all or part of the Crude Oil to be distributed to the State or to GNPC pursuant to this Article shall be sold and delivered by the State or GNPC to Contractor or its Affiliate for use and disposal and in such case Contractor or its Affiliate shall pay to the State or to GNPC, as the case may be, the Market Price for any Crude Oil so sold and delivered.
- 10.5 Ownership and risk of loss of all Crude Oil produced from the Contract Area which is purchased by Contractor, and all of Contractor's Participating Interest share of Crude Oil, or other Crude Oil lifted by Contractor, shall pass to Contractor at the outlet flange (the "**Delivery Point**") of the marine terminal or other storage facility for loading into tankers or other transportation equipment referred to in Article Article 11.

10.6 Subject to the provisions of 0 hereof, Contractor shall have the right to freely export and dispose of all the Crude Oil allocated and/or delivered to it pursuant to this Article 10.

10.7 The Parties entitled to lift shall enter into supplementary agreements concerning Crude Oil offtake procedures not later than one hundred and eighty (180) days prior to the estimated Date of Commencement of Commercial Production for each Development and Production Area. Such offtake procedures shall be consistent with International Oil Field Practice and shall provide, among other matters, detailed terms and procedures governing:

- (a) short term production forecasts;
- (b) nomination and calculation of entitlements;
- (c) delivery and lifting schedules, which lifting schedules shall minimize the possibility of any reduction or shut-in of production;
- (d) lifting procedures;
- (e) right and obligation of each Party to lift;
- (f) steps to be taken in the event a Party becomes a defaulting lifter;
- (g) point of custody transfer;
- (h) lifting tolerances;
- (i) loading conditions;
- (j) metering; and
- (k) underlifting and overlifting, and the settlement of lifting imbalances, if any, at the end of each Calendar Year.

The Crude Oil to be distributed or otherwise made available to the Parties in each Calendar Year in accordance with the preceding provisions of this Article shall insofar as possible be in reasonably equal Monthly quantities.

10.8 To assist in the making of the AOE calculation in accordance with Article 10.2, there is attached as **Error! Reference source not found.** to this Agreement a worked example of the calculation using hypothetical figures, rates, and thresholds, for the purpose of illustration only.

## Article 11

### MEASUREMENT AND PRICING OF CRUDE OIL

- 11.1 Crude Oil shall be delivered by Contractor to storage tanks or other suitable holding facilities constructed, maintained, and operated in accordance with applicable laws and International Oil Field Practice. Crude Oil shall be metered or otherwise measured for quantity and tested for quality in such storage tanks or other suitable holding facilities for purposes of this Agreement. Any Party may request that measurements and tests be done by an internationally recognized inspection company. Contractor shall arrange and pay for the conduct of any measurement or test so requested; provided, however, that in the case of (1) a test requested for quality purposes and/or (2) a test requested on metering (or measurement) devices, where the test results demonstrate that such devices are accurate within acceptable tolerances agreed to by the Parties or if not established by the Parties, then in accordance with International Oil Field Practice, the Party requesting the test shall reimburse Contractor for the costs associated with the test or tests.
- 11.2 GNPC or its authorized agents shall have the right:
- (a) to be present at and to observe such measurement of Crude Oil; and
  - (b) to examine and test whatever appliances are used by Contractor.
- 11.3 In the event that GNPC considers Contractor's methods of measurement to be inaccurate, GNPC shall notify Contractor to this effect, and the Parties shall meet within ten (10) days of such notification to discuss the matter. If after thirty (30) days the Parties cannot resolve the matter, they shall refer for resolution by a Sole Expert under Article 24.8 the sole question of whether Contractor's method of measuring Crude Oil is accurate and reasonable. Retrospective adjustments to measurements shall be made where necessary to give effect a determination rendered under Article 24.8.
- 11.4 If upon the examination or testing of appliances provided for in Article 11.2(b) any such appliances shall be discovered to be defective:
- (a) Contractor shall take immediate steps to repair or replace such appliance; and
  - (b) subject to the establishment of the contrary, such error shall be deemed to have existed for three (3) Months, or since the date of the last examination and testing, whichever occurred more recently.
- 11.5 In the event that Contractor desires to adjust, repair, or replace any measuring appliance, it shall give GNPC reasonable notice to enable GNPC or its authorized agent to be present.

- 11.6 Contractor shall keep full and accurate accounts concerning all Crude Oil measured as aforesaid and provide GNPC with copies thereof on a Monthly basis, not later than ten (10) days after the end of each Month.
- 11.7 The Market Price for each Month shall be equal to the volume weighted average price of the Crude Oil sold by Contractor during such Month pursuant to Articles 11.7(a), 11.7(b), and 11.7(c):
- (a) on Crude Oil sold by Contractor in Arm's Length Transactions, the Market Price shall be the price actually realized by Contractor on such sales;
  - (b) One (1) Year prior to the anticipated Date of Commencement of Commercial Production, GNPC and Contractor shall meet to agree on a formula which will be used to determine the Market Price of monthly sales of Crude Oil by Contractor not in an Arm's Length Transaction. The following principles shall apply in determining this formula:
    - i) a marker Crude Oil commonly used to price Crude Oil from the region (such as dated Brent) will be selected whose widely traded and transparent price is reported daily by major independent market publications. An average of such a marker Crude Oil price calculated over a period of five (5) days following the Bill of lading date will form the base value of the Market Price for each lifting;
    - ii) a basket of reference Crude Oils similar in quality to the Crude Oil to be valued and sourced from the same region shall be selected, and the international market prices of these Crude Oils, customarily quoted as a differential to the marker Crude Oil, shall be used to derive a differential to the marker Crude Oil for the Crude Oil to be valued. This differential will be established with due consideration for differences (versus the chosen basket) of known measures of Crude Oil quality (e.g., sulphur, API gravity, viscosity, and total acid number), as well as refining value (derived from pre-production distillation assays and expected refinery yields of marketable fuels, and calculated using the appropriate Monthly average spot product prices) in the consuming markets; and
    - iii) in the event that one (1) or more of the Crude Oils comprising an agreed basket no longer meets the requirements of Article 11.7(b)(ii), a replacement Crude Oil basket shall be determined by agreement between GNPC and Contractor.

If GNPC and Contractor cannot agree on an appropriate formula (or an appropriate replacement formula under Article 11.7(b)(iii)) within thirty (30) days after meeting to agree such formula, the disagreement shall be referred to a Sole Expert pursuant to Article 24.8.

At the request of GNPC or Contractor, the formula shall be reviewed Quarterly during the first Year after the Date of Commencement of Commercial Production, and every five (5) Years thereafter.

- (c) Notwithstanding anything to the contrary in this Article 11.7, the Market Price for Crude Oil sold to an Affiliate of a Contractor Party and that is later sold by Contractor's Affiliate to a third party on an arm's length basis shall be the price actually realized by Contractor's Affiliates for such sale;
  - (d) **"Arm's Length Transactions"** shall mean sales to purchasers independent of the seller, which do not involve Crude Oil exchange or barter transactions, government to government transaction, sales directly or indirectly to Affiliates, or sales involving consideration other than payment in United States Dollars or currencies convertible thereto, or affected in whole or in part by considerations other than the usual economic incentives for commercial arm's length Crude Oil sales;
  - (e) the price of Crude Oil shall be expressed in U.S. Dollars per Barrel, F.O.B. the Delivery Point by Contractor; and
  - (f) if Crude Oils of various qualities are produced from the Contract Area, the Market Price shall be determined separately for each type sold and/or exported by Contractor, only to the extent that the different quality grades remain segregated through to the point where they are sold, and if grades of different quality are commingled into a common stream, Contractor and GNPC shall agree on an equitable methodology for assessing relative value for each grade of Crude Oil comprising the blend and shall implement the agreed methodology for having the producer(s) of higher quality Crude Oil(s) be reimbursed by the producer(s) of lower quality Crude Oil(s).
- 11.8 Within fifteen (15) days after the end of each Month each Contractor Party shall provide the following information to an independent third party (appointed by the Parties to aggregate this information) for liftings that occurred during that Month: sales basis with respect to benchmark Crude Oil, the pricing basis, the differential, any deductions, bill date, and the price determined by it for such sales. The independent third party shall, within twenty-two (22) days after the end of each Month: (1) aggregate the information provided by the Contractor Parties; (2) calculate the Market Price; (3) provide such aggregated information and the Market Price on behalf of Contractor to the Minister, the Ghana Revenue Authority, and the Petroleum Commission; and (4) notify the Contractor Parties and GNPC of the Market Price and when such aggregated information has been provided to the Minister, the Ghana Revenue Authority, and Petroleum Commission. For the purposes of this Article 11.8, the obligations of the Contractor Parties shall be several.
- 11.9 If GNPC considers that the Market Price notified by Contractor was not correctly determined in accordance with the provisions of Article 11.7, it shall so notify Contractor not later than thirty (30) days after notification by

Contractor of such price, and GNPC and Contractor shall meet not later than ten (10) days thereafter to agree on the correct Market Price.

- 11.10 In the event that GNPC and Contractor fail to agree on the Market Price after meeting for the purpose described in Article 11.9, the Market Price shall be referred for determination in accordance with Article 24 of this Agreement.
- 11.11 Pending a determination under Article 11.7, the Market Price will be deemed to be the last Market Price agreed or determined, as the case may be, or if there has been no such previous agreement or determination, the price notified by Contractor for the lifting in question under Article 11.7. Should the determined price pursuant to Articles 11.9 or 11.10 be different from that used in accordance with the price notified by Contractor under Article 11.8, then any amounts due under this Agreement that are calculated using the Market Price shall be recalculated based on the differential plus interest at the Specified Rate, and shall be paid in cash, or in Crude Oil if GNPC and the relevant Contractor Party agree, by or to the relevant Contractor Party, as the case may be, within thirty (30) days of such determination.

## Article 12

### TAXATION AND OTHER IMPOSTS

- 12.1 Contractor shall be exclusively subject to the following taxes, duties, fees, and other imposts that shall be imposed by the State or any entity or any political subdivision of the State in respect of work and services related to Petroleum Operations and the sale and export of Petroleum:
- (a) Tax in accordance with the Petroleum Income Tax Law, unless specifically excepted in this Article 12;
  - (b) Income tax under the Petroleum Income Tax Law, which shall be levied at the rate of thirty-five percent (35%) for the term of this Agreement, unless otherwise reduced by law for Petroleum Operations;
  - (c) Payments for rental of State property, public lands, or for the provisions of specific services requested by Contractor from public enterprises; provided, however, that the rates charged Contractor for such rentals or services shall not exceed the prevailing rates charged to other members of the public who receive similar services or rentals;
  - (d) Acreage fees payable to the State pursuant to Section 86 of the Petroleum Law per square kilometre of the area remaining at the beginning of each Contract Year as part of the Contract Area, in the amounts as set forth below.

<u>Phase of Operation</u>	<u>Acreage Fees Per Annum</u>
Initial Exploration Period	US \$50 per sq. km.
First Extension Period	US \$100 per sq. km.
Second Extension Period	US \$100 per sq. km.
Development & Production Area	US \$200 per sq. km.

These fees shall be pro-rated where the beginning of a period and the end of a period, or the creation of a Development and Production Area occurs during the course of a Calendar Year.

- 12.2 Notwithstanding any other provision of this Agreement, sales, transfers, or assignments of any assets, property, or partial or total interest in this Agreement to GNPC shall be exempt from all taxes, duties, fees, and other imposts of any kind, whether national, regional, or local.
- 12.3 Contractor and its Subcontractors shall not be obliged to withhold any amount of tax from any sum due in respect of work and services or the supply or use of goods for or in connection with this Agreement, except for



a five percent (5%) withholding tax in lieu of the rates, required by Section 71(4) and paragraph 8(2) of the First Schedule to the Petroleum Income Tax Law.. No withholding tax shall be required in respect of services provided to Contractor by an Affiliate, provided such services are charged at cost.

- 12.4 Contractor shall not be subject to withholding tax on dividends as required by Section 115 of the Petroleum Income Tax Law or withholding tax and stamp duty with respect to the Development Loan Agreement and the Default Loan Agreement.
- 12.5 Contractor can carry forward costs for up to ten (10) years instead of the five (5) year limitation allowed by Section 67(6) of the Petroleum Income Tax Law.
- 12.6 Contractor and its Affiliates shall not be liable for any export tax on Petroleum exported from Ghana, and no duty or other charge shall be levied on such exports. Vessels or other means of transport used in the export of Contractor's Petroleum from Ghana shall not be liable for any tax, duty, or other charge by reason of their use for that purpose.
- 12.7 Subject to the local purchase obligations hereunder, Contractor, Affiliates, and Subcontractors may import into Ghana all plant, equipment and materials to be used solely and exclusively in the conduct of Petroleum Operations without payment of customs and other duties and taxes on imports save minor administrative charges representing normal charges payable in respect of service actually rendered by agencies of the State with respect to the import into Ghana of such plant, equipment and materials as per the description of such charges in Section 22.3 of Ghana National Petroleum Corporation Law 1983 ("PNDCL 64").

**PROVIDED THAT:**

- (a) GNPC shall have the right of first refusal for any item imported duty free under this Article which is later sold in Ghana; and
  - (b) where GNPC does not exercise its right of purchase, Contractor, Affiliates, and Subcontractors may sell to any other person subject to the relevant law.
- 12.8 Contractor, its Affiliates and Subcontractors shall not be liable to pay VAT in respect of plant, equipment, and materials, and related services supplied in Ghana, to be used solely and exclusively in the conduct of Petroleum Operations. Foreign National Employees of Contractor or its Affiliates, and of its Subcontractors, shall be permitted to import into Ghana free of import duty, their personal and household effects in accordance with Section 22.7 of PNDCL 64; provided, however, that no such property imported by such employee shall be resold by such employee in Ghana except in accordance with Article 12.7.



12.9 Subject to GNPC's rights under Article 19, Contractor, Affiliates, Subcontractors, and Foreign National Employees shall have the right to export from Ghana all items imported duty free. Such exports shall be exempt from all customs and other duties, taxes, fees, and charges on exports save minor administrative charges representing normal charges payable in respect of service actually rendered by agencies of the State with respect to such export per the description of such charges in Section 22.3 of PNDCL 64.

12.10 The Ghana income tax law applicable generally to individuals who are not employed in the petroleum industry shall apply in the same fashion and at the same rates to employees of Contractor, its Affiliates, and its Subcontractors; provided, however, that Foreign National Employees of Contractor, its Affiliates, and its Subcontractors, as permitted under Section 71(3) of the Petroleum Income Tax Law, shall be exempted from the income tax and withholding tax liabilities unless they are present in Ghana for one hundred and eighty-three (183) days or more in aggregate in any Calendar Year.

12.11

(a) Decommissioning costs will be estimated on a Development and Production Area basis. Upon the earlier of (i) fifteen (15) Years prior to the projected cessation of commercial production from a Development and Production Area or (ii) reasonable belief that fifty percent (50%) of the recoverable reserves have been produced from a Development and Production Area, each Contractor Party shall provide Decommissioning Security for its share of the decommissioning costs, as determined in accordance with: (1) the approved plan for decommissioning and abandonment submitted pursuant to Article 8.13(q); and (2) the following formula:

$$\frac{\text{[ ]}}{\text{[ ]}}$$
, where:

“TDC” is the Party’s share of total decommissioning costs established in accordance with the approved plan for decommissioning and abandonment submitted pursuant to Article 8.13(q);

“CP” is the cumulative production of Petroleum from the start of the Calendar Year in which the Decommissioning Security was first provided; and

“VR” is the estimated remaining volume of ultimately recoverable Petroleum reserves from the Development and Production Area at the start of the Calendar Year in which the Decommissioning Security was first provide .

The Security must be issued for a minimum of one (1) Calendar Year, and must be renewed or replaced at least thirty (30) days prior to the expiration date of such Security.

If the Contract Area has more than one (1) Development and Production Area, the amount of the provision in this Article 12.11 will be subsequently increased to reflect the costs of the Development and Production assets of all Development and Production Areas. The total amount shall be adjusted periodically by Contractor to reflect new estimates of the decommissioning costs.

In lieu of Decommissioning Security, each Contractor Party can deposit cash for its share of the decommissioning costs in an escrow account opened with an international first-tier banking institution, designated by the Contractor, that has a long term debt rating of at least A+ by Standard & Poor's, or A1 by Moody's Investors Service, or an equivalent rating by a successor entity to either agency. This escrow account, intended to cover the decommissioning costs, shall be managed by Operator, and withdrawals shall be made only and exclusively to finance the decommissioning activities approved by the Government.

If GNPC elects to keep the facilities and equipment in order to continue Petroleum Operations 1) after the expiration of the Petroleum Agreement or 2) after the termination of the Petroleum Agreement by any of the parties, the contributions deposited into the escrow account by the Contractor shall be put at GNPC's disposal to cover the later decommissioning. If the Contractor had been issuing Decommissioning Security, the Contractor shall deposit equivalent funds in the escrow account in lieu of Decommissioning Security. The Contractor shall be released from any further decommissioning liability in respect of such facilities and equipment.

- 12.12 It is the intent of the Parties that payments by Contractor of tax levied by the Petroleum Income Tax Law or any other tax imposed on Contractor qualify as creditable against the income tax liability of each company comprising Contractor in its jurisdiction. Should the fiscal authority involved determine that the Petroleum Income Tax Law does not impose a creditable tax, the Parties agree to negotiate in good faith with a view to establishing a creditable tax on the precondition that no adverse effect should occur to the economic rights of GNPC or the State.
- 12.13 All tax returns prepared and payments made by Contractor and its Affiliates or Subcontractors, and Foreign National Employees thereof, shall be in United States Dollars.
- 12.14 In the event of a conflict between the tax exemptions granted to Contractor, Subcontractors, employees, and Affiliates, as provided for in this

Agreement, and the provisions of any existing or subsequently enacted statute or law which imposes taxes, duties, fees, and other imposts of any kind, the State shall assume and discharge all such taxes, duties, fees, and other imposts of any kind, including any interest, penalties, or additional amounts which may be imposed with respect thereto, which Contractor and its Subcontractors, employees, and Affiliates would otherwise be required to pay.

- 12.15 The State shall procure that the tax authorities issue to Contractor, within a reasonable period, not exceeding ninety (90) days following the filing of the annual return due under Section 124 of the Petroleum Income Tax Law, a tax receipt and all other documents certifying that Contractor has met all its fiscal obligations for the Year. Such tax receipts shall be issued in the name of Contractor, state the amount of taxes paid, and detail other customary information that is contained in such tax receipts in Ghana.
- 12.16 Contractor shall be exempt from any upfront payment and/or refund requirements on any exempt taxes, duties, fees and other imposts of any kind.

## **Article 13**

### **FOREIGN EXCHANGE TRANSACTIONS**

- 13.1 Contractor shall, for the purpose of this Agreement, be entitled to receive, remit, keep, and utilise freely abroad all the foreign currency obtained from the sales of the Petroleum assigned to it by this Agreement or purchased hereunder, or from transfers, as well as its own capital, receipts from loans, and in general all assets thereby acquired abroad. Contractor shall be free to dispose of this foreign currency or assets as it deems fit.
- 13.2 Contractor shall have the right to open and maintain in Ghana bank accounts in foreign currency and Ghanaian currency. No restriction shall be made on the import by Contractor of funds assigned to the performance of the Petroleum Operations, and Contractor shall be entitled to purchase Ghanaian currency, without discrimination, at the prevailing rate of exchange; provided, however, that such prevailing rate applicable to Contractor hereunder for all transactions for converting Ghanaian currency into United States Dollars, and vice versa, shall be at a buying or selling, as the case may be, rate of exchange not less favourable to Contractor than that quoted by the State or its foreign exchange control authority to any person or entity on the dates of such conversion.
- 13.3 Contractor shall be entitled to convert into foreign currencies of its choice funds imported by Contractor for the Petroleum Operations and held in Ghana at the prevailing rate of exchange referred to in Article 13.2 and remit and retain such foreign currencies outside Ghana.
- 13.4 In the event of resale by Contractor or its Affiliate of Crude Oil purchased from the State or GNPC, the State or GNPC shall have the right to request payment for such sales of its share of production to Contractor or its Affiliate to be held in the foreign currency in which the resale transaction took place or in United States Dollars.
- 13.5 Contractor shall have the right to make direct payments outside of Ghana from its offices abroad, and elsewhere, to its employees, and to those of its Subcontractors and suppliers for wages, salaries, purchases of goods, and performance of services, whether imported into Ghana or supplied or performed therein for Petroleum Operations carried out hereunder, in accordance with the provisions of this Agreement, in respect of services performed within the framework of this Agreement, and such payments shall be considered Petroleum Costs. In the event of any changes in the location of Operator's home office, Operator shall so notify GNPC and the State.

- 13.6 All payments which this Agreement obligates Contractor to make to GNPC or the State, including income taxes, shall be made in United States Dollars, except as requested otherwise pursuant to Article 13.4 above. All payments shall be made by electronic transfer (or in such other manner as may be mutually agreed) in immediately available funds to a bank to be designated by GNPC or the State, and reasonably accessible to Contractor by way of its being able to receive payments made by Contractor and give confirmation of receipt thereof.
- 13.7 All payments which this Agreement obligates GNPC or the State to make to Contractor shall be made in United States Dollars. All payments shall be made by electronic transfer (or in such other manner as may be mutually agreed) in immediately available funds to a bank to be designated by Contractor, and reasonably accessible to GNPC or the State by way of its being able to receive payments made by GNPC or the State and give confirmation of receipt thereof.
- 13.8 For the avoidance of doubt, Contractor shall not be obligated to transact business through banks in Ghana, provided that Contractor maintains a bank account in Ghana for the funding of its local payment obligations, including payment to Ghanaian Subcontractors.
- 13.9 Article 13.1 shall apply equally to any receipt or remittance by Contractor in connection with the Development Loan Agreement and the Default Loan Agreement.
- 13.10 The State shall ensure that all applicable waivers and exemptions necessary to give effect to, and maintain throughout the term of this Agreement, Contractor's rights pursuant to this Article 13 are granted.

## **Article 14**

### **SPECIAL PROVISIONS FOR NATURAL GAS**

#### **PART I - GENERAL**

All Natural Gas produced by Contractor in association with GNPC under this Agreement shall be the property of GNPC, subject to this Article 14.

- 14.1 Contractor shall have the right to use Natural Gas produced from any Development and Production Area for Petroleum Operations within the Contract Area, such as reinjection for pressure maintenance and/or power generation at no cost.
- 14.2 Contractor shall not flare or vent Natural Gas except:
  - (a) to the extent provided for in an approved Development Plan;
  - (b) during production testing operations;
  - (c) when required for operational safety or the safety of persons engaged in Petroleum Operations in accordance with International Oil Field Practice; or
  - (d) as otherwise authorized by the Minister.
- 14.3 Contractor shall have the right to dispose of its share of production of Natural Gas, in accordance with this Agreement. Contractor has the right to equity market, either abroad or domestically, its share of Natural Gas production in a gas commercialization project; provided that priority is given to the demand for Natural Gas in the domestic market in Ghana if such priority can be served without prejudice to an export project.
- 14.4 Contractor shall have the right to extract and dispose of liquid hydrocarbons from its share of Natural Gas pursuant to the provisions of this Agreement relating to Crude Oil. Commercialization of Contractor's share of liquid hydrocarbons extracted outside the Contract Area will be subject to a separate agreement. Residual Natural Gas remaining after the extraction of liquid hydrocarbons is subject to the provisions of this 13.8.

#### **PART II - ASSOCIATED GAS**

- 14.5 Subject to Articles 14.1, 14.2, and 14.8, all Natural Gas produced in association with Crude Oil is the property of GNPC. The Development Plan of each Development and Production Area shall include a plan of utilization for Associated Gas.

- 14.6 If Contractor considers that production, processing, and utilisation of Associated Gas from any Development and Production Area is non-economic, GNPC shall have the option to offtake such Associated Gas (not used for Petroleum Operations or flared pursuant to Articles Article 14 and 14.2) at the outlet flange of the gas-oil separator on the Crude Oil production facility, at its Sole Risk for its own use. GNPC and Contractor shall work together to develop the appropriate interface between Natural Gas infrastructure owned by the State and/or GNPC and the Development and Production Area. To that end, Contractor's proposed Development Plan shall include:
- (a) an assessment of the facilities necessary for the delivery to GNPC of such Associated Gas;
  - (b) a plan for the reinjection of Associated Gas into the reservoir if needed for pressure support; and
  - (c) GNPC's plan for any other utilization.
- 14.7 The decision of GNPC as to whether or not to exercise the option provided for in Article 14.6 shall be made in a timely manner. In making such decision and in its subsequent conduct, GNPC shall avoid the prevention of, or delay to: (a) the submission of the proposed Development Plan by Contractor pursuant to Article 14.6; and (b) orderly start up or continuation of the production of Crude Oil as envisaged in the approved Development Plan.
- 14.8 If GNPC elects to offtake Associated Gas under Article 14.6 above, GNPC shall be solely responsible for any additional facilities needed for the delivery of such Associated Gas to GNPC, provided that:
- (a) if Contractor subsequently wishes to participate in GNPC's gas utilization programme, it shall reimburse GNPC for the costs of such facilities, plus a premium of three hundred percent (300%) of costs; or
  - (b) if Contractor subsequently develops a gas utilization programme and requires the use of GNPC's gas facilities, Contractor shall pay GNPC an agreed fee for such use.
- 14.9 If Contractor considers that it may be economic to produce Associated Gas for sale, Contractor shall conduct a commercial assessment of such Associated Gas prior to the submission of the Development Plan, and Part IV below shall apply as to such Associated Gas. The purpose of the commercial assessment shall be to study the uses to which production of Natural Gas from the Discovery Area can be devoted, specifically whether involving exports or domestic utilization. As part of the assessment, the Parties shall also pursue discussions on the required

contractual arrangements for disposition of the Natural Gas to potential purchasers, consumers, infrastructure owners, and GNPC.

- 14.10 If, at the time of the submission of the Development Plan, Contractor is still conducting its commercial assessment to define the economic viability of producing the Associated Gas for sale, Contractor shall notify the Minister and the Petroleum Commission of the further evaluations planned to finalize the assessment. After completion of the assessment, and at the latest two (2) years after the submission of the Development Plan, Contractor shall declare whether it is economic to produce Associated Gas for sale. If Contractor declares the production of Associated Gas for sale is non-economic based on the assessment, GNPC shall have the option to offtake the Associated Gas per Article 4.16, otherwise, Part IV below shall apply.

### **PART III - NON-ASSOCIATED GAS**

- 14.11 Contractor shall have the right to commercialize a Discovery of Non-Associated Gas in the Contract Area in accordance with the provisions of this Agreement. Except as otherwise provided in this Agreement, the terms applicable to a Discovery as provided under Article 8 of this Agreement shall apply to a Discovery of Non-Associated Gas.
- 14.12 Where Contractor submits notice pursuant to Article 8.2 or Article 8.18 indicating that the Discovery does not at that time merit Appraisal but may merit Appraisal or additional evaluation at a later date during the Exploration Period or during the initial period under a new petroleum agreement made pursuant to Article 14.19 below, then Contractor need not submit a Proposed Appraisal Programme at that time but instead shall indicate to the Petroleum Commission what other studies or evaluations (in accordance with a definite timetable) may be warranted before an Appraisal Programme is undertaken. Where Contractor's notice indicates that the Discovery will not merit Appraisal at any time during the Exploration Period or during the initial period under a new petroleum agreement made pursuant to Article 14.19, then Contractor shall relinquish the rights to the Non-Associated Gas within that Discovery Area.
- 14.13 Not later than ninety (90) days from the date on which the Appraisal Programme relating to the Discovery is concluded, Contractor shall submit to the Minister and the Petroleum Commission a report containing the results of the Appraisal Programme (the "**Appraisal Report**"). The Appraisal Report may conclude that the Discovery merits commercial assessment. If the Appraisal Report concludes that the Discovery merits commercial assessment, Contractor shall submit to the Minister and the



Petroleum Commission within thirty (30) days from the date of submission of the Appraisal Report, a programme incorporating a specific timetable for conducting such commercial assessment for approval by the Minister. If the Minister approves this programme in accordance with Articles 8.14 through 8.17, mutatis mutandis, such commercial assessment shall be conducted within the Exploration Period and, if applicable, during the initial period under a new petroleum agreement made pursuant to Article 14.19. Notwithstanding the above, the Minister may approve the conduct of other studies or evaluation, in accordance with a specific timetable, which may be warranted before a commercial assessment is undertaken, if Contractor notifies the Minister that commercial assessment of the Discovery is not warranted at that time, but the Discovery may merit such assessment at a later date during the Exploration Period or during the initial period under a new petroleum agreement.

- 14.14 The purpose of the commercial assessment shall be to study the uses to which production of Non-Associated Gas from the Discovery Area can be devoted, specifically whether involving exports or domestic utilization. As part of the assessment, the Parties shall also pursue discussions on the required contractual arrangements for disposition of the Natural Gas to potential purchasers, consumers, infrastructure owners, and GNPC. Contractor may undertake a Non-Associated Gas commercialization project at a level that will facilitate the achievement of a reasonable rate of return for Contractor, and shall use the State's gas infrastructure if available.
- 14.15 Contractor may consult with the Minister and GNPC, and may make appropriate representations proposing changes in the fiscal and other provisions of this Agreement which may, in the opinion of Contractor, affect the above determinations made pursuant to Articles 14.9, 14.12, and 8.3. The Minister and GNPC may, where feasible and in the best interests of the Parties, agree to make such changes or modifications in the existing arrangements.

#### **PART IV-NATURAL GAS PROJECTS**

- 14.16 If at any time during the commercial assessment Contractor informs the Minister in writing that the Discovery can be produced commercially, Contractor shall, within one (1) Year submit to the Minister a Development Plan for such Discovery. The State and GNPC undertake on receipt of such notice to negotiate in good faith with Contractor with a view to reaching agreement on terms for such production. Any such agreement will be based on terms and fiscal requirements which shall be no less favourable to Contractor than those provided for in 12 and 13 and which recognizes the legitimate interest of the State as the resource owner pursuant to Article 3 of the Petroleum Law.

14.17 If at any time during the commercial assessment Contractor has identified:

- (a) a market in Ghana for the reserves of Associated Gas and/or Non-Associated Gas, or any part thereof, that can be served without prejudice to an export project, the Parties shall proceed in good faith to negotiate the appropriate contractual arrangements for the disposition of the Natural Gas. In the event of such a domestic market for such Natural Gas, GNPC and Contractor shall receive for delivery at the Delivery Point their share of the Natural Gas at a price to be agreed between GNPC and Contractor in accordance with Article 14.18(c); or
- (b) an export market for the reserves of Associated and/or Non-Associated Gas, the Parties shall proceed in good faith to negotiate the appropriate contractual arrangements with export customers for the disposition of their respective entitlements of such Natural Gas. Contractor shall dispose of and market its share of the Natural Gas, and GNPC or the State may request Contractor to market their entitlement of such Natural Gas, subject to separate agreement between the Parties.

14.18 In the event of a Discovery of Natural Gas in the Contract Area which is to be developed and commercially produced, the provisions of this Agreement in respect to interests, rights, and obligations of the Parties regarding Crude Oil shall apply to Natural Gas, with the necessary changes in points of detail, except with respect to specific provisions in this Agreement concerning Natural Gas and different or additional provisions concerning Natural Gas which may be agreed by the Parties in the future.

- (a) The system for the allocation of Natural Gas among the Parties shall follow the same general format as Article Article 10 provides for Crude Oil, with the exception that the royalty to be delivered to the State on Natural Gas for gas projects shall be at the rate of five percent (5%) of the annual Gross Production of Natural Gas destined for the domestic market and five percent (5%) for Natural Gas to be exported. If the State elects to take its royalty on Natural Gas in cash, the value of such Natural Gas shall be the Natural Gas market price, less transportation, processing, compression, and marketing costs, as set forth in Article 14.18(c).
- (b) The Parties recognise that projects for the Development and Production of Natural Gas are generally long-term in nature for both the project developers and the customers who purchase the Natural Gas. Substantial investments and dedication of facilities require long-term commitments on both sides. In order to facilitate long-term gas sales and stable lifting continuity for Contractor, no later than sixty (60) days following Contractor's submittal of the gas development plan, the State shall make its elections under Article 14.16(a) whether to receive its entitlement of

Natural Gas in kind or in cash. In the event the State either elects to receive its entitlement of Natural Gas in cash or does not provide said election to Contractor, the State's share of Natural Gas shall be delivered to Contractor, and Contractor shall pay to the State in cash within fifteen (15) days of the end of the Month of such delivery.

- (c) The Natural Gas market price for any sales or marketing of Natural Gas under this Agreement shall be as follows:
  - (i) With respect to Natural Gas export sales in arm's length transactions, the price shall be equal to the price obtained by Contractor for quantities of Natural Gas sold to such purchasers in an invoiced transaction.
  - (ii) With respect to Natural Gas domestic sales or sales that are not arm's length transactions, the price shall be consistent with the following principles:
    - (A) pricing shall assume sound marketing practices; and
    - (B) pricing shall assume efficient operations, taking into account among other things, the cost of finding and developing the Natural Gas, a reasonable return for Contractor on exploration and development investment, and the uses which will be made of the Natural Gas.
  - (iii) Notwithstanding anything to the contrary in this Article 14.16, the market price for Natural Gas sold to an Affiliate of a Contractor Party and that is later sold by Contractor's Affiliate to a third party on an arm's length basis shall be the price actually realized by Contractor's Affiliate for such sale, less transportation, processing, compression, and marketing costs.
- (d) This Agreement, being for a specific term of years, may not cover the length of time for which customers will require commitments on the part of the Parties to this Agreement to deliver their respective shares of the output. Accordingly, the Parties agree to consider undertaking such commitments where reasonably required for the efficient and viable development of a Natural Gas project. It is recognised that, unless otherwise agreed or unless a new petroleum agreement pursuant to Article 14.19 has been entered into by the Parties hereto, Contractor will have no right or interest in the project or the Natural Gas produced and delivered after the Termination or expiration of this Agreement.
- (e) In the event Contractor's Development Plan includes construction of gas facilities to convert Natural Gas into one or more commercially marketable products, and Contractor requires additional Natural Gas from the GNPC system as feedstock for those facilities, Contractor shall have

the right to purchase such Natural Gas from GNPC at a mutually agreed price.

- (f) The Parties will consider collaboration in obtaining any common external financing available for Natural Gas production possibilities, including project financing; however, each Party shall remain free to finance externally its share of such facilities to the extent it prefers to do so.

#### 14.19

- (a) Where Contractor has, during the continuance of the Exploration Period, made a Discovery of Non-Associated Gas but has not, before the end of the Exploration Period, declared that Discovery to be a Commercial Discovery, the State and GNPC will, if Contractor so requests, enter into a new petroleum agreement with Contractor in respect of the Discovery Area to which that Discovery relates.
- (b) The State and GNPC shall not be under any obligation to enter into a petroleum agreement pursuant to Article 9((a) unless before the end of the Exploration Period, Contractor has carried out an Appraisal Programme in respect of that Discovery pursuant to Article 14.11 and submitted to the Minister and the Petroleum Commission an Appraisal Report pursuant to Article 14.13, or has commenced an Appraisal Programme and has notified the Petroleum Commission of reasonable arrangements to undertake and complete such an Appraisal Programme during the period provided for in 14.19((c)(i) below:
- (c) A petroleum agreement entered into pursuant to Article 14.19(a)((a) shall:
  - i) unless the Discovery in respect of which the agreement has been made is declared by Contractor to be a Commercial Discovery, continue in force for an initial period not exceeding three (3) Years;
  - ii) in the event that the Discovery is declared by Contractor to be a Commercial Discovery:
    - 1. continue in force for an aggregate period of twenty-five (25) Years; and
    - 2. include, or be deemed to include, all the provisions which, mutatis mutandis, would have applied to a Commercial Discovery of Non-Associated Gas pursuant to Article 14.18 if Contractor had declared such Discovery to be a Commercial Discovery under this Agreement;
  - iii) contain, in respect of the initial period or of any renewal period, details of the evaluations or studies (in accordance with a specific

timetable) which Contractor proposes to undertake in order to determine or keep under review the commerciality of the Discovery; and

- iv) subject to Article 14.1, confer on GNPC pre-emptive rights in respect of the Natural Gas contained in the reservoir to which the Discovery relates substantially in the form of the provisions hereinafter set out in Article 14.19((e).
- (d) Where Contractor has not, before the end of the initial period of a new petroleum agreement, declared the Discovery to be a Commercial Discovery, and the Minister has, in his discretion, determined that further evaluation or studies may be required before the Discovery can be declared a Commercial Discovery, the right of Contractor to retain the Discovery Area shall continue for a further period not exceeding, in the aggregate, three (3) years. The right of Contractor to retain the Discovery Area aforesaid shall be secured by the renewal of the petroleum agreement, or where necessary by a new petroleum agreement entered into by the Parties for that purpose referred to in this Article 14.17(a).
- (e)
  - i) Where Contractor has not declared the Discovery to be a Commercial Discovery, if GNPC has identified a domestic market for the Natural Gas contained in the reservoir to which the Discovery relates, or any part thereof, it may at any time during the initial period or the aggregate period referred to in 14.19((d) above, serve on Contractor a notice giving particulars of the quantities of Natural Gas required to serve that domestic market and the price offered, and subject to Contractor's rights pursuant to Article 14.17(e)(ii) and on the basis of the procedure detailed in 11 and 14.17(e)(iii), exercise the right referred to in Article 14.19((c)(iv).
  - ii) Within three (3) Months from the receipt of a notice as provided for in Article 14.17(e)(i), Contractor may declare the Discovery to be a Commercial Discovery and, in accordance with the petroleum agreement and the Petroleum Law, prepare and submit to the Minister a Development Plan, which may or may not be for the market identified and at the price offered, as proposed by GNPC pursuant to Article 14.17(e)(i).
  - iii) If Contractor has not, within the period of three (3) Months under Article 14.17(e)(ii), declared the Discovery to be a Commercial Discovery, GNPC may at its Sole Risk, develop the Discovery. If GNPC elects to develop the Discovery, Contractor shall cease to have any rights in respect of the Natural Gas in the reservoir required for that purpose.



## Article 15

### DOMESTIC SUPPLY REQUIREMENTS (CRUDE OIL)

- 15.1 Crude Oil for Consumption (as defined in Article 0) in Ghana (the “**Domestic Supply Requirement**”) shall be supplied, to the extent possible, by the State and GNPC from their respective entitlements under this Agreement and under any other contract for the production of Crude Oil in Ghana.
- 15.2 Contractor shall be obliged together with any third parties which produce Crude Oil in Ghana within three (3) Months’ prior notice from the State, to supply a volume of Crude Oil to be used for such Domestic Supply Requirements, calculated on the basis of the ratio of Contractor’s entitlement to Crude Oil under Article Article 10((c) to the sum of the similar entitlements of all such third parties and provided that Contractor’s obligation to supply Crude Oil for purposes of meeting the Domestic Supply Requirement shall not exceed the total of Contractor’s said entitlement of Gross Production of Crude Oil after deduction of the State’s Royalty under this Agreement.
- 15.3 The State shall purchase any Crude Oil supplied by Contractor pursuant to this 0 at the Market Price determined under Article 11.7 for the Month of delivery, and the State shall pay such prices in accordance with Article 13.7 within fifteen (15) days after receipt of invoice, failing which Contractor’s obligations in respect of the Domestic Supply Requirement under this 0 shall be suspended until payment is made good, at which time deliveries shall be resumed subject to any alternative commitments that may have been reasonably entered into by Contractor to dispose of the Domestic Supply Requirement during the period of default in payment.
- 15.4 The calculation of the Domestic Supply Requirement shall be done on a Calendar Year basis, broken down by Month. The calculation shall begin with the determination of the quantities of Crude Oil required for Consumption in Ghana in each relevant Month during the applicable Calendar Year. “**Consumption**” shall, for purposes of this Article 15, consist of the total Crude Oil consumed in Ghana, Crude Oil processed in Ghana and LPG, kerosene, gas oil, gasoline, and fuel oil imported into Ghana..

## Article 16

### **INFORMATION AND REPORTS: CONFIDENTIALITY**

- 16.1 Contractor shall keep the Petroleum Commission and GNPC regularly and fully informed of Petroleum Operations being carried out by Contractor and, subject to Article 16.2, provide the Petroleum Commission and GNPC with all information, data, samples, interpretations, and reports (including progress and completion reports) including:
- (a) processed seismic data and interpretations thereof;
  - (b) well data, including electric logs and other wireline surveys, and mud logging reports and logs, oil or hydrocarbon samples, samples of cuttings, and cores and analyses made therefrom;
  - (c) any reports prepared from drilling data or geological or geophysical data, including maps or illustrations derived therefrom;
  - (d) well testing and well completion reports;
  - (e) reports dealing with location surveys, seabed conditions, and seafloor hazards, and any other reports dealing with well, platform, or pipeline locations;
  - (f) reservoir investigations and estimates regarding reserves, field limits, and economic evaluations relating to future operations; provided that each Party retains full responsibility for making its own assessment of reserves for internal and reporting purposes;
  - (g) daily, weekly, Monthly, and other regular reports on Petroleum Operations;
  - (h) comprehensive final reports upon the completion of each specific project or operation;
  - (i) contingency programmes and reports on safety and accidents;
  - (j) a statement showing the values, executing companies, award, and completion dates.

Data shall be provided on film, paper, or in digital format to the Petroleum Commission and GNPC. In respect of the reports, including text and graphics, paper or digital copies shall be submitted.

- 16.2 Contractor shall have the right to retain, for its own use in connection with the conduct of Petroleum Operations under this Agreement, copies of



data, well logs, maps, magnetic tapes, other geological and geophysical information, portions of core samples, and copies of reports, studies, and analyses referred to in Article 16.1. Notwithstanding anything to the contrary in this Agreement, Contractor Parties shall not be obligated to provide management communications to the Petroleum Commission and GNPC.

16.3 Not later than ninety (90) days following the end of each Calendar Year, Contractor shall submit to the Petroleum Commission and GNPC a report covering Petroleum Operations performed in the Contract Area during such Calendar Year. Such report shall include:

- (a) a statement of the number of Exploration Wells, Appraisal Wells, and Development Wells drilled, the depth of each such well, and a map on which drilling locations are indicated;
- (b) a statement of any Petroleum encountered during Petroleum Operations, as well as a statement of any fresh water layers encountered and of any other minerals discovered;
- (c) a statement of the quantity of Petroleum produced and of all other minerals produced therewith from the same reservoir or deposit;
- (d) a summary of the nature and extent of all Exploration activities in the Contract Area;
- (e) a general summary of all Petroleum Operations in the Contract Area; and
- (f) a statement of the number of employees engaged in Petroleum Operations in Ghana, identified as Ghanaian or non-Ghanaian.

16.4 All data, information, and reports, including interpretation and analysis supplied by Contractor pursuant to this Agreement (“**Data**”) shall be treated as confidential by the Parties and shall not be disclosed by: (a) any Contractor Party to any other person without the express written consent of GNPC; or (b) GNPC or the State to any other person without the express written consent of Contractor. Such consent shall not be unreasonably delayed or withheld.

16.5 Article 16.4 shall not prevent disclosure of Data by:

- (a) GNPC or the State:
  - i) to any agency of the State or to any advisor or consultant to GNPC or the State; or
  - ii) to applicants seeking to obtain a petroleum agreement in respect of any open acreage adjacent to the Contract Area; provided that such disclosure of Data: (1) within two (2) Years of the acquisition of

such Data shall require Contractor consent; and (2) after two (2) Years of the acquisition of such Data shall require prior notice to Contractor;

or

(b) Contractor:

- i) to its Affiliates, advisers, or consultants;
- ii) to a bona fide potential assignee of all or part of Contractor's interest, provided that with respect to a bona fide assignee of Contractor's interest, GNPC is given prior notice of such potential assignee;
- iii) to banks or other financial institutions for the purpose of seeking external financing of costs of the Petroleum Operations;
- iv) to non-Affiliates who shall provide services for the Petroleum Operations, including Subcontractors, vendors, and other service contractors, where this is essential for their provision of such services; or
- v) to governmental agencies for obtaining necessary rulings, permits, licenses, and approvals, or as may be required by applicable law or stock exchange, accounting, or reporting practices, and provided, where possible, GNPC is given prior notice of such disclosure;

or

(c) any Party:

- i) to the extent necessary in any arbitration proceedings or proceedings before a Sole Expert pursuant to Article 24, or in proceedings before any court; or
- ii) with respect to Data, which already through no fault of the disclosing Party is in the public domain.

16.6 Any Party disclosing information or providing Data to any third party under Article 16.5 shall require such persons to observe the confidentiality of such Data, which shall, at a minimum, require these persons to utilize the same degree of care with respect to this obligation as such persons utilize with respect to their own proprietary information and other proprietary information of third parties, and the right to disclose to the aforementioned persons under Article 16.5 also constitutes the prior written approval of GNPC, which shall procure any necessary approvals

from the Petroleum Commission to export such data for these disclosures pursuant to Section 53(2) of the Petroleum Law.

Disclosures of Data to any third party other than those specified in Article 16.5, with the exception of bona fide potential assignees under Article 16.5(b)(ii), shall require the execution of a form confidentiality agreement.

- 16.7 Public statements and press releases regarding the Petroleum Operations undertaken under this Agreement shall be issued jointly by Contractor and GNPC, and Contractor and GNPC shall agree on the timing and wording of such statements and releases to the public. Where, however, Contractor or GNPC is required to make a public statement or press release under the applicable laws, rules, or regulations of any government, legal proceedings, or a stock exchange having jurisdiction over such Party or any of its Affiliates, to the extent permitted by law, that Party shall inform the other Party of such requirement and submit the text of the proposed statement or release for comment and/or approval. Should a Party fail to respond within three (3) Business Days of the submission (or such shorter period as may be reasonable in the event of an emergency or disaster, or reasonably required or necessary to enable the disclosing Party to comply with applicable laws, rules, or regulations of any government, legal proceedings, or a stock exchange having jurisdiction over such disclosing Party) to a request for the approval of a public statement or press release for such purposes, such failure to respond shall be deemed approval of the request.
- 16.8 Subject to any applicable pre-existing obligations, all intellectual property rights to any and all inventions, discoveries, or improvements made or conceived directly in connection with conducting Petroleum Operations shall be jointly owned by Contractor and GNPC if jointly made or conceived by: (1) a Contractor Party's employees, contractors (including the Contractor Parties), Subcontractors, or secondees; and (2) GNPC's employees, contractors, Subcontractors, or secondees. Each Contractor Party and GNPC may freely use all such inventions, discoveries, or improvements in its normal operations (including joint operations or a production sharing arrangement in which the Party or its Affiliates has an ownership or equity interest or a contractual right to produce or operate hydrocarbon interests) without the approval of any other Party. However, no Contractor Party or GNPC may grant permission to any other person or entity to use any such joint property without the consent of Contractor Parties and GNPC. Subject to obtaining such consent, each Contractor Party and GNPC is authorized to execute the appropriate grant of usage rights to any such joint property. Any revenues realised from such grant shall be distributed proportionately to Contractor and GNPC in accordance with their interest under this Agreement.

- 16.9 Notwithstanding any provision to the contrary in this Agreement, if a Contractor Party has used proprietary technology owned or controlled by such Contractor Party or its Affiliates in Petroleum Operations then such Contractor Party or its Affiliate may, in its sole discretion, make such proprietary technology available to GNPC on terms to be agreed between GNPC and such Contractor Party or its relevant Affiliates.

## Article 17

### **INSPECTION, SAFETY, AND ENVIRONMENTAL PROTECTION**

- 17.1 Subject to reasonable advance notice to Operator, GNPC shall, during regular business hours, have the right of access to all sites and offices of Operator and the right to inspect all buildings and installations used by Operator relating to Petroleum Operations. Such inspections and audits shall take place in consultation with Operator and at such times and in such manner so as not to unreasonably or unduly interfere with the normal operations of Operator.
- 17.2 Contractor shall take all necessary steps, in accordance with International Oil Field Practice, to perform activities pursuant to the Agreement in a safe manner and shall comply with health, safety, and environmental laws and regulations issued by the Environmental Protection Agency of Ghana and other relevant State agencies.
- 17.3 Contractor shall provide an effective and safe system for disposal of water and waste oil, oil based mud, and cuttings in accordance with applicable laws of Ghana and International Oil Field Practice, and shall provide for the safe completion or abandonment of all boreholes and wells.
- 17.4 Contractor shall exercise its rights and carry out its responsibilities under this Agreement in accordance with International Oil Field Practice, and shall take steps in such manner as to:
- (a) result in minimum ecological damage or destruction;
  - (b) control the flow and prevent the escape or the avoidable waste of Petroleum discovered in or produced from the Contract Area;
  - (c) prevent damage to Petroleum-bearing strata;
  - (d) prevent the entrance of water through boreholes and wells to Petroleum-bearing strata, except for the purpose of secondary recovery;
  - (e) prevent damage to onshore lands and to trees, crops, buildings, or other structures; and
  - (f) avoid any actions which would endanger the health or safety of persons.
- 17.5 Subject to Article 17.2, in the event of pollution or damage to fresh water, marine, plant, animal life, or land that is caused by Contractor as a result of Petroleum Operations, Contractor shall, in accordance with applicable laws and International Oil Field Practice, promptly take all necessary measures, in accordance with International Oil Field Practice to control the pollution, to clean up Petroleum or other released material, or to

repair, to the maximum extent feasible, damage resulting from any such circumstances. If such release or pollution does not result directly from the Gross Negligence / Wilful Misconduct of Contractor's Senior Supervisory Personnel, the cost of clean-up and repair activities shall be included as Petroleum Costs under this Agreement. If such release or pollution results directly from the Gross Negligence / Wilful Misconduct of Contractor's Senior Supervisory Personnel, the cost of subcontract clean-up and repair activities shall be borne by Contractor and shall not be included as Petroleum Costs under this Agreement. Contractor shall only be responsible for direct, actual (documented) costs in relation to pollution damage caused by Contractor and shall not be liable for consequential, special, indirect, punitive, or exemplary damages in relation to pollution. Contractor shall not be responsible for any environmental conditions existing prior to the commencement of the drilling of the first Exploration Well or any activities not related to Petroleum Operations.

- 17.6 In the event of any emergency or major accident or major release of materials into the environment, Contractor shall: (a) notify GNPC immediately, but in any event within forty-eight (48) hours after Contractor is aware of such event; and (b) take such action as may be prescribed by International Oil Field Practice.
- 17.7 If Contractor does not act promptly so as to control, clean up, or repair any pollution or damage, GNPC may, after giving Contractor reasonable notice in the circumstances, take any actions which are necessary, in accordance with applicable laws of Ghana and International Oil Field Practice, and the reasonable costs and expenses of such actions shall be borne by Contractor and shall, subject to Article 17.5, be included as Petroleum Costs.
- 17.8 Prior to commencing drilling of the first Exploration Well, Contractor shall conduct a baseline environmental study of the degree of pollution in the relevant portion of the Contract Area to determine the environmental conditions existing therein. The terms, timing, and procedure of such baseline environmental study shall be set forth in an approved Work Programme and budget.

## Article 18

### ACCOUNTING AND AUDITING

- 18.1 Each Contractor Party shall maintain, at its office in Ghana, books of account and supporting records in the manner required by applicable law and accepted accounting principles generally used in the international petroleum industry, and shall file reports, tax returns, and any other documents and financial returns which are required by applicable law.
- 18.2 In addition to the books and reports required by Article 18.1, Operator (on behalf of Contractor) shall maintain, at its office in Ghana, a set of accounts and records relating to Petroleum Operations under this Agreement. Such accounts shall be kept in accordance with the requirements of the applicable law and accepted accounting principles generally used in the international petroleum industry.
- 18.3 The accounts required by Articles 18.1 and 18.2 shall be kept in United States Dollars or such other currency as GNPC and Contractor may agree.
- 18.4 Contractor will provide GNPC with Quarterly and annual financial statements and summaries of Petroleum Costs incurred under this Agreement.
- 18.5 GNPC shall review all financial statements submitted by Contractor as required by this Agreement, and shall signify its provisional approval or disapproval of such statements in writing within ninety (90) days of receipt, failing which the financial statements as submitted by Contractor shall be deemed approved by GNPC; in the event that GNPC indicates its disapproval of any such statement, Contractor and GNPC shall meet, within fifteen (15) days of Contractor's receipt of the notice of disapproval, to review the matter.
- 18.6 Notwithstanding any provisional approval pursuant to Article 18.5, GNPC shall have the right, upon giving reasonable notice in writing to Contractor, to audit, at GNPC's sole expense, the books and accounts of Contractor relating to Petroleum Operations within two (2) Calendar Years after the end of the Calendar Year in which any report of financial statement is submitted by Contractor to GNPC. GNPC shall not, in carrying out such audit, interfere unreasonably or unduly with the conduct of Petroleum Operations. Any such audit shall be undertaken by an independent auditing firm and shall be completed within nine (9) Months after commencement. Subject to compliance with Contractor's safety and security requirements, Contractor shall provide access to all necessary facilities for auditors appointed hereunder by GNPC and timely access to all relevant personnel, records, files, and other materials.

If GNPC desires verification of charges from an Affiliate, Contractor shall, at GNPC's sole expense, obtain for GNPC or its representatives an audit certificate for this purpose from the statutory auditors of the Affiliate concerned. Copies of audit reports shall be provided to Contractor and GNPC. Any unresolved audit claim resulting from such audit, upon which Contractor and GNPC are unable to agree, shall be submitted to the JMC for decision, which must be unanimous. In the event that a unanimous decision is not reached in respect of any audit claim, then such unresolved audit claim shall be submitted for resolution in accordance with Article 24. Subject to any adjustments resulting from such audits, Contractor's accounts and financial statements shall be considered to be correct on expiry of a period of two (2) Calendar Years from the end of the Calendar Year in which they are submitted to GNPC unless before the expiry of such two (2) Calendar Year period GNPC has notified Contractor of any exceptions to such accounts and statements.

- 18.7 Nothing in this Article shall be read or construed as placing a limit on GNPC's access to Contractor's books and accounts in respect of matters arising under Article 23.3((a).
- 18.8 In the event of any changes in location of Operator's office in Ghana, Operator shall so notify GNPC, the Minister, and the Petroleum Commission.
- 18.9 Petroleum Costs incurred with respect to the Contract Area shall have no bearing on allowable or non-allowable costs under any other contract area or Contractor's eligibility or otherwise for deductions in computing Contractor's net income from petroleum operations for income tax purposes in any other contract area. Similarly, petroleum costs incurred in any other contract area shall have no bearing on allowable or non-allowable costs in respect of the Contract Area or Contractor's eligibility or otherwise for deductions in computing Contractor's net income from Petroleum Operations for income tax purposes in respect of the Contract Area.



## Article 19

### TITLE TO AND CONTROL OF GOODS AND EQUIPMENT

- 19.1 GNPC shall be the sole and unconditional owner of:
- (a) Petroleum produced and recovered as a result of Petroleum Operations, except for such Petroleum as is distributed to the State and to Contractor pursuant to 12 or 13.8; and
  - (b) all physical assets other than those to which Articles 19.3 or 19.4 apply, which are purchased, installed, or constructed by Contractor in Petroleum Operations in the Contract Area as from the earlier of the following:
    - i) the full cost thereof has been depreciated and/or recovered in accordance with the provisions of the Accounting Guide; or
    - ii) this Agreement is terminated pursuant to Articles 23.2 or 23.3, or expires under Article 23.1, and Contractor has not disposed of such assets prior to such termination or expiration.
- 19.2 Contractor shall have the use of the assets referred to in Article 19.1((b) for purposes of its operations under this Agreement without payment, provided that Contractor shall remain liable, in accordance with the terms of this Agreement and International Oil Field Practice, for maintenance, insurance, and other costs associated with such use. Where Contractor has failed to keep any such asset in good working condition (normal wear and tear excepted), GNPC shall have the right to recover the cost of repair or replacement of such assets from Contractor. Contractor shall indemnify GNPC against all losses, damages, claims, or legal action resulting from Contractor's use of such assets, if and in as far as such losses, damages, claims, or legal actions were directly caused by the Gross Negligence / Wilful Misconduct of Contractor's Senior Supervisory Personnel.
- 19.3 Equipment or any other assets rented or leased by Contractor which is imported into Ghana for use in Petroleum Operations and subsequently re-exported therefrom, which is of the type customarily leased for such use in accordance with International Oil Field Practice or which is otherwise not owned by Contractor shall not be transferred to GNPC. No equipment or assets owned or leased by a Subcontractor shall by reason of the provisions of this Article 19 be deemed to be transferred to GNPC.
- 19.4 All assets owned by Contractor which are not affected by the provisions of Article 19.1((b) above may, where required for further Petroleum Operations, be retained by GNPC for such operations, provided that GNPC shall thereby be liable to pay a reasonable and mutually agreed fee for such use, and shall bear the cost of repair or replacement upon failure

to keep such assets in good working condition (normal wear and tear excepted), and further provided that Contractor does not require such assets for its Petroleum Operations. GNPC shall indemnify Contractor against all losses, damages, claims, or legal action resulting from GNPC's use of such assets, if and in as far as such losses, damages, claims, or legal actions were directly caused by the Gross Negligence / Wilful Misconduct of GNPC's Senior Supervisory Personnel.

- 19.5 Subject to Article 19.3, upon the termination of Petroleum Operations in any area, Contractor shall give GNPC the option to acquire any movable and immovable assets used for such Petroleum Operations and not affected by the provisions of Article 19.1((b) at a reasonable and mutually agreed price, always provided that Contractor does not require such assets for Contractor's Petroleum Operations in the Contract Area.
- 19.6 All assets which are not affected by Article 19.1((b), or subject to Articles 19.4 or 19.5, and all Subcontractor equipment, may be freely exported by Contractor or its Subcontractor, respectively, at its discretion.

## Article 20

### PURCHASING AND PROCUREMENT

- 20.1 Contractor, following consultation with the Petroleum Commission, shall submit an annual local content plan which includes the engagement and utilization of local Ghanaian subcontractors for the provision of goods and services, and the employment and development of qualified Ghanaian citizens (“Local Content Plan”) to the Petroleum Commission and the Minister for approval. The Local Content Plan shall establish Contractor’s obligation with respect to the local content threshold requirements of the First Schedule of the Local Content Regulations. The capacity of local suppliers in the Ghanaian market will be assessed periodically by a qualified international third party and the results of the assessment will be presented to the Petroleum Commission.
- 20.2 Contractor shall, and shall require its Subcontractors to:
- (a) acquire materials, equipment, machinery, and consumer goods produced or provided in Ghana by an Indigenous Ghanaian Company which are: (1) equivalent in terms of quality, quantity, availability, delivery, safety, and other commercial terms as foreign materials, equipment, machinery, and consumer goods; and (2) available for sale at prices which are no more than ten percent (10%) higher than the imported items, including transportation and insurance costs and customs charges due; and
  - (b) contract local services provided by an Indigenous Ghanaian Company to the extent to which: (1) the services they provide are equivalent in terms of quality, availability, safety, and other commercial terms as those available from foreign contractors; and (2) their prices, when subject to the same tax charges, are no more than ten percent (10%) higher than the prices charged by foreign contractors for similar services.
- 20.3 For the purposes of Article 20.2, price comparisons shall be made on a c.i.f. Accra delivered basis.
- 20.4 Any contract to be entered into or awarded by Contractor for the provision of services for Petroleum Operations shall be subject to the following contracting procedures:
- (a) Contractor shall inform the Petroleum Commission of the forecasted contracting activities on a Quarterly basis;
  - (b) Contracts that are estimated to be in excess of the Cedi equivalent of amount to be agreed with the Petroleum Commission shall be competitively tendered.

- (c) For each competitive tender or sole source contract above the agreed threshold pursuant to Article 20.4(b), Contractor shall provide the Petroleum Commission with:
  - (i) the information specified in Part B of the Third Schedule of the Local Content Regulations, before issuing a request for quotation; and
  - (ii) the information specified in Part C of the Third Schedule of the Local Content Regulations, before awarding a contract or purchase order to the selected bidder or the sole source Subcontractor
- (d) Contractor shall inform the Petroleum Commission, on a Quarterly basis, of all subcontracts executed within the reported Quarter.

## Article 21

### EMPLOYMENT AND TRAINING

- 21.1 In order to establish programmes to train Ghanaian personnel for work in Petroleum Operations and for the transfer of management and technical skills required for the efficient conduct of Petroleum Operations, Contractor shall pay to the Petroleum Commission:
- (a) A training allowance in the amount of two million United States Dollars (US\$2 million) per Contract Year. The amounts shall be payable within thirty (30) days after the beginning of each Contract Year, provided that the amount payable shall be pro rata for any period less than a full Calendar Year.
  - (b) A one-time technology support payment of seven million United States Dollars (US\$7 million), payable within thirty (30) days of the Effective Date.

All payments made pursuant to Articles 21.1(a) and 21.1(b) shall be paid by Contractor by electronic transfer to an account designated by the Petroleum Commission and verified by Contractor.

- 21.2 All payments under Article 21.1 shall be: considered Petroleum Costs.
- 21.3 Where Ghanaian personnel with equivalent qualifications, training, and experience are available for employment in the conduct of Petroleum Operations, Contractor shall, as far as reasonably possible, provide opportunities for the employment of such personnel. For this purpose, Contractor shall, from time to time, submit to GNPC an employment plan stating the reasonably foreseeable number of persons (and the required professions and technical capabilities) from the commencement of Petroleum Operations. GNPC shall be given the opportunity to nominate such personnel according to the said plan for Contractor's consideration and approval. Contractor may select or reject any GNPC nominee, in Contractor's sole discretion.
- 21.4 Contractor shall, if so requested by GNPC, provide opportunities for a mutually agreed number of personnel nominated by GNPC to be seconded for on-the-job training or attachment in all phases of its Petroleum Operations under a secondment contract to be mutually agreed prior to such secondment. Such secondment contract shall include continuing education and short industry courses mutually identified as beneficial to the seconded. Costs and other expenses connected with such assignment of GNPC personnel shall be: (a) borne by the Contractor; and (b) considered Petroleum Costs.

- 21.5 Contractor shall assist GNPC personnel to acquire knowledge and skills in petroleum science, technology, economics, and engineering.
- 21.6 Subject in all respects to Articles 16.4 - 16.6, it is agreed that there will be no disclosure or transfer of any documents, data, know-how, technology, or other information owned or supplied by Contractor, its Affiliates, or non-Affiliates, to third parties without Contractor's prior written consent (such consent not to be unreasonably withheld), and then only upon written agreement by the recipients to retain such information in strict confidence.

## Article 22

### **FORCE MAJEURE**

- 22.1 The failure of GNPC or a Contractor Party to fulfil any term or condition of this Agreement, except for the payment of monies, shall be excused if and to the extent that such failure arises from Force Majeure, provided that, if the event is reasonably foreseeable, such Party shall have prior thereto taken all reasonably appropriate precautions and all reasonable alternative measures with the objective of carrying out the terms and conditions of this Agreement.
- 22.2 In the event that GNPC or a Contractor Party is unable, wholly or in part, to perform its obligations provided for in the Agreement as a result of such event of Force Majeure, such Party whose performance of obligations are prevented by the event of Force Majeure shall immediately, but not later than fourteen (14) days from when such an occurrence becomes evident, give written notice to the other Parties, including details of such event of Force Majeure and such Party's estimate of the duration of the event of Force Majeure.
- 22.3 Throughout the duration of the event of Force Majeure, the affected Party shall report to the other Parties any changes to its estimate of the duration of the delay, and any significant developments with respect to the event of Force Majeure.
- 22.4 A Party unable by an event of Force Majeure to perform any obligation hereunder shall take all reasonable measures to remove its inability to fulfill the terms and conditions of this Agreement with a minimum of delay, and the Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.
- 22.5 During the duration of an event of Force Majeure, each Party shall bear its own costs arising from the delay in performance under the Agreement, except for those reasonably incurred costs to maintain safe and necessary Petroleum Operations.
- 22.6 Should the event of Force Majeure be reasonably expected to last longer than six (6) Months from the date of notification pursuant to Article 22.2, the Parties agree to enter into discussion to review and assess the situation with the aim to identify a proper recovery plan for the future implementation of this Agreement, including an extension in accordance with Article 22.8 or a modification of the applicable contractual terms. When a recovery plan is identified and agreed, any affected Party's commitment schedule will be considered revised accordingly.

Should the event of Force Majeure continue for a period of one (1) Year from the date of notification pursuant to Article 22.2, Contractor shall have the option upon at least sixty (60) days written notice to the other Parties to terminate this Agreement without further liability of any kind.

22.7 The affected Party shall notify the other Parties of the termination of an event of Force Majeure in writing within seven (7) days of such termination.

22.8 Any period set herein for the completion by a Party of any act required or permitted to be done or rights or benefits to be enjoyed under the terms of this Agreement, shall be extended for a period of time equal to that during which such Party was unable to perform such actions or enjoy such rights or benefits as a result of Force Majeure, together with such time as may be required for the resumption of Petroleum Operations.

22.9 In the case that Contractor declares Force Majeure in respect of an action, omission or provision of the State, GNPC shall be entitled to elect for the duration of such declaration by Contractor to also be relieved of substantially the same obligations that Contractor has been relieved of by its declaration of Force Majeure in respect of such State action, omission or provision (but only to the extent that GNPC is unable to perform such obligations as a result of such Force Majeure in respect of such State action, omission or provision).



## Article 23

### TERM AND TERMINATION

- 23.1 Subject to this Article 23, the term of this Agreement shall be twenty-five (25) Years commencing from the Effective Date. The Minister shall approve an extension for an additional five (5) Years, provided that Contractor (i) has demonstrated that production from a Development and Production Area extends beyond the initial term and (ii) is in compliance with all of its obligations under this Agreement. The approval of the extension shall be subject to ratification by Parliament.
- 23.2 Subject to Article 22, Termination of this Agreement shall result upon the occurrence of any of the following:
- (a) Contractor's relinquishment or surrender of the entire Contract Area;
  - (b) the termination of the Exploration Period, including extensions pursuant to Article 3, without notification by Contractor of a Commercial Discovery pursuant to Article 8 or 13.8 (Part III) in respect of a Discovery of Petroleum in the Contract Area; provided, however, Termination shall not occur while: (i) Contractor has the right to evaluate a Discovery for Appraisal or determination of a Commercial Discovery and/or propose a Development Plan pursuant to Articles 3.2, Article 8, or 13.8; (ii) once a Development Plan has been approved; or (iii) the provisions of Articles 8.10 through 8.20 are applicable;
  - (c) if, following a notice that a Discovery is a Commercial Discovery, the Exploration Period terminates under Article 3 without a Development Plan being approved; provided, however, that Termination shall not occur when the provisions of Articles 8.10 through 8.20 are applicable; or
  - (d) pursuant to the procedures described in Article 23.4, the failure of Contractor through any cause other than Force Majeure, to commence preparations with respect to Development Operations pursuant to Article 8.12 within three (3) Months after the Minister's approval of the Development Plan.
- 23.3 Subject to Article 22 and pursuant to procedures described in Article 23.4 below, GNPC and/or the State may terminate this Agreement upon the uncorrected occurrence of any of the events (or failures to act listed) below:
- (a) the submission by Operator or a Contractor Party, to GNPC of a written statement which Operator or such Contractor Party knows or reasonably should have known to be false in a material particular, or the release by Operator or a Contractor Party to any print or electronic media or to a stock exchange of a written statement regarding the Petroleum Operations

in Ghana in breach of Article 16.7 and in a form which Operator or a Contractor Party knows or should reasonably have known to be false in a material particular; provided that (i) in the event of intent on the part of Operator or such Contractor Party to cause serious damage to GNPC or the State, a period for remedy of such false statement shall not be given; and (ii) the submission of such a written statement or release in violation of Article 16.7 that is false in a material particular by less than all of the Contractor Parties shall result in the withdrawal of the Contractor Party that makes such a written statement or release, and shall not lead to a termination of the Agreement if the other Contractor Parties assume all of the rights and obligations of the withdrawing Contractor Party;

- (b) the assignment by Contractor of this Agreement contrary to the provisions of Article 25 hereof; provided that an assignment by less than all of the Contractor Parties shall result in the withdrawal of the assigning Party and its assignee, and shall not lead to a termination of the Agreement if the other Contractor Parties assume all of the rights and obligations of the withdrawing Contractor Party;
- (c) the insolvency or bankruptcy of a Contractor Party, the entry by a Contractor Party into any agreements or composition with its creditors, taking advantage of any law for the benefit of debtors or a Contractor Party's entry into liquidation, or receivership, whether compulsory or voluntary, which in itself provides evidence that the obligations of such Contractor Party hereunder will not be performed. Provided that the insolvency or bankruptcy of one Contractor Party shall not lead to a termination of the Agreement if the other Contractor Parties and/or GNPC, as the case may be, will assume all of the rights and obligations of the defaulting Contractor Party under this Agreement. In such a case, GNPC shall have the right to acquire a share of the interest of the defaulting Contractor Party proportionate to the total of GNPC's Initial Interest and Additional Interest (if GNPC elects to take an Additional Interest pursuant to Article 2.5 prior to the insolvency or bankruptcy of the defaulting Contractor Party), in which case GNPC shall assume its proportionate share of the rights and obligations of the defaulting Contractor Party under this Agreement and the Joint Operating Agreement. GNPC may exercise this right by notice to all Contractor Parties within thirty (30) days following notification of the insolvency or bankruptcy of the defaulting Contractor Party. GNPC's written notice shall state the percentage share of the interest of the defaulting Contractor Party which GNPC proposes to acquire. Upon exercise by GNPC of its rights pursuant to this Article 23.3(c), GNPC shall execute all appropriate transfers, assignments, novations, and Joint Operating Agreements which were in place as between or among the Parties. For clarity, the interest so acquired by GNPC pursuant to this Article 23.3(c) shall be a Paying Interest and not receive the benefits of a GNPC Carried Interest or Additional Interest;

- (d) the intentional extraction by Contractor of any mineral (as defined in the Ghana Minerals and Mining Act, 2006 (Act 703)) of potential economic value other than as authorised under this Agreement, or any applicable laws of Ghana, except for such extraction as may be unavoidable as a result of Petroleum Operations. Where, however, in the course of Petroleum Operations conducted in accordance with International Oil Field Practice Contractor unavoidably extracts any mineral of potential economic value, Contractor shall immediately notify the Minister and, if requested by the Minister, Contractor shall provide further information;
- (e) failure by Contractor:
  - i) to fulfil the Minimum Work Obligations pursuant to Article 4.3, save where the Minister has waived the default;
  - ii) to carry out an Appraisal Programme undertaken by Contractor pursuant to Article 8, unless Contractor notifies GNPC and the Petroleum Commission that the Appraisal Programme should be amended and submits said amendment to the Petroleum Commission for its approval; or
  - iii) to carry out the terms of an approved Development Plan;
- (f) material failure by Contractor to comply with any of its obligations pursuant to Articles 7.1((a) through 7.1(o);
- (g) failure by Contractor to make any payment of any sum due to GNPC or the State pursuant to this Agreement within thirty (30) days after receiving notice that such payment is due; or
- (h) failure by Contractor to comply with any decisions reached as a result of any arbitration proceedings conducted pursuant to Article 24 hereof; provided that the failure of less than all of the Contractor Parties to comply with such decisions shall result in the withdrawal of such Parties and shall not lead to a termination of the Agreement if the other Contractor Parties assume all of the rights and obligations of the Contractor Parties that fail to comply with such decisions.

23.4 If GNPC and/or the State believe an event or failure to act as described in Articles 23.2(d) or 23.3 above has occurred, a written notice shall be given to Contractor describing the event or failure. Contractor shall have thirty (30) days from receipt of said notice to commence and pursue remedy of the event or failure cited in the notice. If after said thirty (30) days Contractor has failed to commence appropriate remedial action, GNPC and/or the State may then issue a written notice of Termination to Contractor which shall become effective thirty (30) days from receipt of said notice of Termination by Contractor unless Contractor has referred the matter to arbitration in accordance with Article 24. In the event that

Contractor disputes whether an event specified in Articles 23.2(d) or 23.3 has occurred or been remedied, Contractor may, any time up to the effective date of any notice of Termination, refer the dispute to arbitration pursuant to Article 24. If so referred, GNPC and/or the State may not terminate this Agreement in respect of such event, except in accordance with the terms of any resulting arbitration award as provided for in Article 24.

- 23.5 Upon Termination of this Agreement, all rights and obligations of the Parties hereunder shall cease, except for: (a) such rights and obligations as may at such time have accrued under this Agreement prior to Termination; and (b) such rights and obligations as the Parties may have under applicable law.
- 23.6 Notwithstanding Termination of this Agreement, Article 1, Article 2, 14, Article 16, 17.8, Article 24, Articles **Error! Reference source not found.** to 26.5, Article 26.7, and Article 26.13(i), and such other provisions of this Agreement as are reasonably necessary for the full enjoyment and enforcement of accrued rights and obligations pursuant to Article 23.5 shall survive such Termination for the period necessary.
- 23.7 Upon Termination of this Agreement or in the event of an assignment of all the rights of Contractor, all wells and associated facilities shall be left in a state of good repair in accordance with applicable laws of Ghana and International Oil Field Practice.

## Article 24

### CONSULTATION, ARBITRATION, AND INDEPENDENT EXPERT

- 24.1 Subject to the prior fulfillment of any procedures specified in this Agreement to resolve disputes arising hereunder and except for disputes to be resolved by Sole Expert pursuant to Article 24.8, any dispute arising between the State and GNPC or either of them on one hand and Contractor on the other hand in relation to, in connection with, or arising out of this Agreement shall be resolved by consultation and negotiation among senior personnel authorized by each Party. In the event that no agreement is reached within thirty (30) days after the date when the State and/or GNPC, on the one hand, or Contractor, on the other hand, notifies the other that a dispute exists within the meaning of this Article or such longer period specifically agreed to by the Parties or provided elsewhere in this Agreement, any Party shall have the right, subject to Article 24.9, to have such dispute settled exclusively through international arbitration under the auspices of the International Chamber of Commerce (the “**ICC**”) using the Rules of Arbitration of the International Chamber of Commerce (the “**ICC Rules**”) in force on the date on which the proceedings are instituted, which ICC Rules are deemed incorporated by reference into this Article 24, save as otherwise provided herein.
- 24.2 The failure or refusal to submit to arbitration in accordance with this Article and/or the seeking of any Pre-Award Attachment against State assets (excluding any assets of GNPC) by any Party shall be deemed a breach of this Agreement by such Party. In the event of a breach of this Article, each non-breaching Party shall, without prejudice to any other remedies, be entitled to recover from each breaching Party all costs and expenses, including reasonable attorneys’ fees, that such non-breaching Party was thereby required to incur.
- 24.3 The tribunal shall consist of three (3) arbitrators. The State and/or GNPC, on the one hand, and Contractor, on the other hand, shall each be entitled to appoint one (1) arbitrator, and those so appointed shall appoint a chairman arbitrator. If a Party’s arbitrator and/or the chairman arbitrator is/are not appointed within the periods provided in the ICC Rules, such Party’s arbitrator and/or the chairman arbitrator shall, at the request of any Party to the dispute, be appointed by the ICC International Court of Arbitration in accordance with the ICC Rules.
- 24.4 No arbitrator or Sole Expert shall: (a) be a citizen of the home country of any Party hereto; or (b) have any economic interest or relationship with any Party hereto or any such Party’s ultimate parent company.

- 24.5 The seat of the arbitration proceedings shall be in London, England or at such other location as the Parties to the dispute may unanimously agree in writing. The proceedings shall be conducted in the English language.
- 24.6 The award of the tribunal shall be final and binding upon the Parties. The Parties undertake to carry out any award without delay and waive their right to any form of recourse based on grounds other than those contained in the United Nations Convention on the Recognition and Enforcement of Arbitral Awards of 1958 insofar as such waiver can be validly made. Judgement upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party or its assets.
- 24.7 The right to arbitrate disputes arising out of this Agreement shall survive Termination of this Agreement.
- 24.8 Each of the State, GNPC, and Contractor agree that, to the extent such party has any right of immunity from legal proceedings in Ghana, London, or elsewhere arising from the terms and conditions of this Agreement, including immunity from service of process, immunity from the jurisdiction, judgment, or award of any arbitral tribunal, or immunity from execution of judgment, such Party hereby expressly and irrevocably waives any such immunity and agrees not to assert or invoke any such rights or claims in any proceeding.
- 24.9 The Parties to a dispute arising under this Agreement, including the Accounting Guide, may in lieu of arbitration, mutually agree in writing to refer the dispute for determination by a sole expert to be appointed by agreement of the Parties (subject to Article 24.3), who is a recognised specialist with respect to the subject matter of the dispute (a “**Sole Expert**”). Notwithstanding the anything to the contrary in this Agreement, unless otherwise unanimously agreed, the Parties shall refer a dispute under Articles 6.11, 11.3, and 11.7(b)(iii), to a Sole Expert.

The Party desiring a Sole Expert determination shall give the other Parties to the dispute written notice of the request for such determination. If the Parties to the dispute are unable to agree upon a Sole Expert within ten (10) days after receipt of the notice of request for a Sole Expert determination, then, upon the request of any of the Parties to the dispute, the ICC shall appoint such Sole Expert. The Sole Expert, once appointed, must not have any ex parte communications with any of the Parties to the dispute concerning the Sole Expert determination or the underlying dispute. The Parties to the dispute shall agree on the terms of reference for such proceeding, the schedule of presentation of evidence and testimony of witnesses, and other procedural matters. Any Sole Expert proceeding pursuant to this Agreement shall be conducted in accordance with the Rules for the Administration of Expert Proceedings of the ICC in force on the date on which the proceeding is instituted. The Sole Expert shall have ninety



(90) days after his appointment to decide the case, subject to any extensions mutually agreed to by the Parties to the dispute. Upon failure of the Sole Expert to decide the matter within such time, any Party to the dispute shall have the right to have such dispute settled through arbitration under the foregoing provisions of this Article 24.

The decision of the Sole Expert shall be final and binding upon the Parties to the dispute unless challenged in an arbitration within sixty (60) days of the date the Sole Expert's final decision is received by the Parties to the dispute. Such arbitration shall be limited to disputes regarding: (a) the interpretation of the provisions of this Agreement governing Sole Expert determination (including the scope of the Sole Expert's jurisdiction); (b) whether the Sole Expert determination was affected by fraud; (c) whether there was a material breach of the Sole Expert to follow the procedures in accordance with this Agreement; or (d) for enforcement of a Sole Expert determination. In such arbitration, the Sole Expert determination on the specific matter shall be entitled to a rebuttable presumption of correctness, and the Sole Expert shall not (without the written consent of the Parties to the dispute) be appointed to act as an arbitrator or as adviser to the Parties to the dispute.

24.10 Each Party to a dispute shall pay its own counsel and other costs; however, costs of the arbitration tribunal shall be allocated in accordance with the decision of the tribunal. The costs and fees of the Sole Expert shall be borne equally by the Parties to the dispute.

24.11 In the event of a matter being referred for resolution under this Article 24, any obligations of the Parties relating specifically and directly to such matter, including a dispute relating to Termination, shall (unless otherwise provided by this Agreement) be suspended without liability to any Party, until said matter has been resolved pursuant to this Article 24 and a final arbitration award is made by the arbitral tribunal or Sole Expert determination has been rendered, as the case may be. All time periods applicable to such obligations in the Agreement shall be extended by the period of the arbitration proceedings or Sole Expert determination proceedings, provided that any Petroleum Operations not specifically and directly related to any obligations referred to above shall not be suspended unless the Parties mutually agree otherwise.

24.12 Subject to Article 9.11, neither the State nor GNPC, on the one hand, or Contractor, on the other hand, shall be held liable to the other for any: (a) consequential, special, indirect, punitive, or exemplary damages arising directly or indirectly out of, in relation to, or in connection with this Agreement, regardless of cause or fault; or (b) reservoir or formation damage, unless such reservoir or formation damage resulted from a Party's Gross Negligence / Wilful Misconduct.





## Article 25

### ASSIGNMENT

- 25.1 Except for assignments to wholly-owned Affiliates of a Contractor Party and assignments among Contractor Parties, no interest in this Agreement shall be assigned by Contractor directly or indirectly, in whole or in part, without the prior written consent of GNPC and the Minister. A Contractor Party shall provide prior notice sixty (60) days in advance of: (1) a direct assignment to a wholly-owned Affiliate; or (2) an assignment of more than fifty percent (50%) of the voting rights of the immediate parent of a Contractor Party to a wholly-owned Affiliate.
- 25.2 Any assignment of this Agreement shall bind the assignee as a Party to this Agreement to all the terms and conditions hereof unless otherwise agreed by the non-assigning Parties, and as a condition to any assignment Contractor shall require assignee to provide an unconditional undertaking to assume all obligations assigned by Contractor under this Agreement.
- 25.3 The obligations of each Contractor Party hereunder shall be in accordance with Article 26.6(b).
- 25.4 GNPC's acquisition of Additional Interest under Article 2 or a Sole Risk interest pursuant to 11 shall not be deemed to be an assignment within the meaning of this Article 25.
- 25.5 The transfer or disposal by a Contractor Party (the "**Selling Party**") of all or part of its Participating Interest, whether directly or indirectly by assignment, merger, consolidation, or sale of stock or other conveyance, other than (a) with or to an Affiliate of a Contractor Party or among Contractor Parties as a result of a default or withdrawal under the Joint Operating Agreement or (b) upon a transfer of shares by the ultimate parent entity of a Contractor Party, including in connection with a takeover of such ultimate parent, shall be subject to the following procedure:
- a) Once the Selling Party and a proposed transferee have fully negotiated the final terms and conditions of a transfer, such final terms and conditions shall be promptly disclosed in detail to GNPC and the State in a notice from the Selling Party. GNPC shall have the right, subject to Article 25.5(b), to acquire the Participating Interest from the Selling Party on the same terms and conditions agreed to by the proposed transferee if, within forty-five (45) days of Selling Party's notice, GNPC delivers to the Selling Party a counter-notice that GNPC accepts the agreed terms and conditions of the transfer without reservations or conditions. If GNPC does not deliver such counter-notice within the forty-five (45) day period, the transfer to the proposed transferee may be made, subject to the other

provisions of this Agreement and applicable laws and regulations of Ghana, under terms and conditions no more favourable to the transferee than those set forth in the notice to GNPC and the State; provided that the transfer shall be concluded within two hundred (200) days from the date of the notice plus any additional period as may be required to secure requisite approvals.

- b) GNPC's right to acquire the Participating Interest pursuant to Article 25.5(a) is subject to each Contractor Party having consented in writing to such transfer, which consent shall be denied only if GNPC fails to establish, to the reasonable satisfaction of each Contractor Party, GNPC's financial capability to perform its payment obligations under this Agreement associated with such additional Participating Interest.
- c) In the event that a Selling Party's proposed transfer of all or part of its Participating Interest involves consideration other than cash, or involves other properties included in a wider transaction, then the Participating Interest (or part thereof) shall be allocated a reasonable and justifiable cash value by the Selling Party in any notification to GNPC and the State. GNPC may satisfy the requirements of this Article 25.5 by agreeing to pay such cash value in lieu of the consideration payable in the said proposed transfer.

25.6 GNPC may only assign all of its Initial Interest to an entity that is wholly owned by the State.

GNPC may only assign all of its Additional Interest to: (a) a governmental agency or instrumentality that is wholly owned by the State; or (b) a corporate entity controlled by the State that has been duly authorized by appropriate governmental action to hold such right or perform such obligation, provided that such assignment to a corporate entity controlled by the State shall be subject to the consent of Contractor, which consent shall be denied only if the transferee fails to establish, to the reasonable satisfaction of each Contractor Party, its: (i) financial capability to perform its payment obligations under this Agreement; and (ii) ability to comply with the provisions of Article 26.7.

For the avoidance of doubt, GNPC's participation in the JMC is based solely on its Initial Interest, not its Additional Interest.

Any assignment of GNPC pursuant to this Article 25.6 shall: (a) not affect any of the rights of Contractor under this Agreement; (b) bind the assignee as a Party to this Agreement to all the terms and conditions hereof unless otherwise agreed by Contractor; and (c) require assignee to provide an unconditional undertaking to assume all obligations assigned by GNPC under this Agreement.

25.7 GNPC hereby acknowledges, pursuant to this Article 25, Contractor may assign and/or transfer all or any of its rights under the Development Loan

Agreement and/or the Default Loan Agreement to any person to whom it is permitted to assign the whole or any part of its interest under this Agreement without any further consent being required.

## **Article 26**

### **MISCELLANEOUS**

- 26.1 This Agreement and the relationship between the State and GNPC on one hand and Contractor on the other shall be governed by and construed in accordance with the laws of Ghana.
- 26.2 The State confirms that it will accord to the Contractor Parties treatment consistent with the minimum standard of treatment required to be accorded to foreign investors under applicable bilateral investment treaties and customary international law.
- 26.3 In the event that after the Effective Date any applicable law, rule, decree, or regulation of Ghana is made or amended (or there are changes in interpretation or application of any applicable law, rule, decree, or regulation effective as of the Effective Date) that makes further observance of the original terms and conditions of this Agreement impossible or has a material adverse effect on the rights, obligations, and benefits of Contractor under this Agreement, or otherwise materially affects the economic, fiscal, and financial balance of this Agreement, the Parties shall, if Contractor so requests, meet as soon as possible to negotiate, in good faith, possible modifications to the Agreement as may be appropriate to restore the economic, fiscal, and financial balance of this Agreement; provided that, at a minimum, to the extent Contractor's rights, obligations, or benefits (including the economic, fiscal, and financial balance) which existed at the time the Agreement was executed by all Parties, cannot be restored, even though the Parties have agreed to modify the Agreement, the State shall indemnify Contractor for the adverse effect on Contractor's rights, obligations, or benefits (including the economic, fiscal, and financial balance) through financial compensation or other means acceptable to Contractor.
- 26.4 Should the Parties be unable to agree on a mechanism to restore the economic, fiscal, and financial balance of this Agreement pursuant to Articles 26.3 or 26.4 within thirty (30) days from the date on which the notice above was received (or such longer period as may be agreed by the Parties), then any Party may refer the matter to arbitration pursuant to Article 24 of this Agreement, and the arbitration panel so appointed shall be directed to order such remedies, including damages or modifications to the Agreement, in order to restore the economic, fiscal, and financial balance of the Agreement as at the Effective Date.

- 26.5 This Agreement may not be modified, amended, altered, or supplemented except upon the execution and delivery of a written agreement executed by the Parties. No waiver by any Party of any of its rights hereunder shall be construed or implied, but shall be binding on such Party only if made specifically, expressly, and in writing.
- 26.6 Except for payment obligations arising under the Petroleum Income Tax Law, any Party failing to pay any amounts payable by it under this Agreement (including the provisions of the Accounting Guide) on the respective dates on which such amounts are payable by such Party hereunder shall be obligated to pay interest on such unpaid amounts to the Party to which such amounts are payable. The rate of such interest with respect to each day of delay during the period of such non-payment shall be LIBOR plus eight percent (8%). Such interest shall accrue from the respective dates such amounts are payable until the amounts are duly paid. The Party to whom any such amount is payable may give notice of non-payment to the Party in default, and if such amount is not paid within fifteen (15) days after such notice, the Party to which the amount is owed may, in addition to the interest referred to above, seek remedies available pursuant to Article 24.
- 26.7
- (a) The rights and obligations under this Agreement of the State and GNPC, on the one hand, and Contractor, on the other hand, shall be separate and proportional and not joint. This Agreement shall not be construed as creating a partnership or joint venture, nor an association or trust (under any law other than the Petroleum Law), or as authorizing any Party to act as agent, servant, or employee for any other Party for any purpose whatsoever, except as provided in Article 10.4.
- (b) Subject to the terms of this Agreement, the obligations of each Contractor Party hereunder shall be joint and several, and it is recognized that each such Party shall own and be responsible for its Participating Interest in the rights and obligations of Contractor hereunder; provided, however, that the following payments shall be the separate obligation of and shall be made by each Contractor Party:
- i) Payments under the Petroleum Income Tax Law pursuant to 14;
  - ii) Payments of Royalty taken in cash under the provisions of Article Article 10((a); and
  - iii) AOE share under the provisions of Article Article 10(d).
- 26.8 Each Party agrees and warrants that, in relation to this Agreement and the subject matter hereof, neither: (a) it or any of its Affiliates and their respective directors, officers, employees, or personnel; nor (b) to the best

of its knowledge or belief, any of its consultants, agents, representatives, or other persons retained or otherwise engaged by it, has offered or will offer, or has caused or will cause to be offered, or has given or will give, or has caused or will cause to be given, anything of value (including money, promises, or gifts), whether directly or indirectly to, or for the use of, any government official (including any person holding a legislative, administrative, or judicial office, and any person employed by or acting on behalf of a public agency, public enterprise, or public international organization), political party, or political candidate, or to any member of their respective families: (i) for the purpose of influencing any decision or act which affect a Party or securing an improper advantage; or (ii) that would violate either the applicable laws of Ghana or the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's commentaries..

- 26.9 If a Party is investigated pursuant to any relevant legislation, guidelines, or regulations of any other government having jurisdiction over a Party hereto, which are designed and implemented to deter, prevent, and combat bribery or corruption in relation to international business transactions, the other Parties agree in good faith to give all reasonable assistance to the Party being investigated in relation to any reasonable requests (whether general or specific) for information or documentation regarding the subject transaction(s); provided that: (a) the Party being investigated shall use reasonable efforts to keep the other Parties informed as to the progress and disposition of such investigation or proceeding; and (b) the Parties shall not be obligated to disclose to any other Parties any information that would be considered legally privileged.
- 26.10 Each Party shall indemnify the other Parties for any and all damages, losses, penalties, fines, costs, and other expenses (including reasonable legal costs and attorneys' fees) resulting from, or related to, the events underlying:
- (a) such Party's admission of allegations made by a governmental authority concerning operations and/or activities under this Agreement that such Party or its Affiliates, or their directors, officers, employees, or personnel have violated Article 26.7; or
  - (b) The final adjudication concerning operations and/or activities under this Agreement that such Party or its Affiliates, or their directors, officers, employees, or personnel have violated the warranty in Article 26.7.

Each Party agrees that it shall incorporate terms similar to those set out in Articles 26.7 through 26.9 into all or any contract entered into pursuant to this Agreement and the subject matter thereof.

26.11 No Party is in any way authorized to take any action on behalf of another Party that would result in an inadequate or inaccurate recording or reporting of assets, liabilities, or any other transaction, or which would put such Party in violation of any applicable laws of Ghana or elsewhere.

26.12 Notwithstanding anything in this Agreement to the contrary, no provision shall be interpreted or applied so as to require any Party to do, or refrain from doing, anything that would be prohibited or penalized under any laws or regulations applicable to such Party, including export controls, economic sanctions, antitrust, anti-boycott, and securities and exchange laws and regulations.

26.13 In construing this Agreement:

- (a) no consideration shall be given to the captions of the Articles or Sections which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction;
- (b) the word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions;
- (c) a defined term has its defined meaning throughout this Agreement and each annex to this Agreement, regardless of whether it appears before or after the place where it is defined;
- (d) the plural shall be deemed to include the singular, and vice versa;
- (e) each gender shall be deemed to include the other genders;
- (f) each annex to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any annex, the provisions of the main body of this Agreement shall prevail;
- (g) if any term is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included;
- (h) each reference to an Article or Section refers to an Article or Section of this Agreement, unless expressly otherwise provided; and
- (i) no reference herein to any law, rule, decree, or regulation shall be construed so as to derogate from the rights of Contractor pursuant to Articles **Error! Reference source not found.** and **Error! Reference source not found.**

26.14 This Agreement comprises the full and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes and

cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied.

- 26.15 Nothing in this Agreement shall require Contractor or any of its agents, Subcontractors, or Affiliates to violate the laws of Ghana.
- 26.16 The Parties agree that in those provisions of this Agreement where a Party is required to obtain the consent, approval, determination, or agreement of any other Party, such consent, approval, determination, or agreement shall not be unreasonably withheld or delayed.
- 26.17 This Agreement shall not take effect unless and until the date on which it has been ratified by the Parliament of Ghana (the “**Effective Date**”). For the avoidance of doubt, after the execution of this Agreement by all Parties but prior to the Effective Date, any Party may for any reason withdraw from this Agreement, and upon such withdrawal such Party shall have no rights and obligations under this Agreement, as such rights and obligations would only arise on the Effective Date, which shall only occur if such Party has not withdrawn.



## Article 27

### NOTICE

- 27.1 Any notice, application, request, agreement, consent, approval, instruction, delegation, waiver, or other communication required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given when delivered in person to an authorized representative of the Party to whom such notice is directed or when actually received by such Party through registered mail, fax, or commercial courier at the following address or at such other address as the Party shall specify in writing fifteen (15) days in advance:

#### **FOR THE STATE:**

*MINISTER FOR PETROLEUM  
MINISTRY OF PETROLEUM  
PRIVATE MAIL BAG  
MINISTRY POST OFFICE  
ACCRA, GHANA*

*Telephone: 233 (0)302 667151 - 3  
Telex: 2436 ENERGY GH  
Telefax: 233 (0)302 668262*

#### **FOR GHANA NATIONAL PETROLEUM CORPORATION:**

*THE CHIEF EXECUTIVE  
GHANA NATIONAL PETROLEUM CORPORATION  
PETROLEUM HOUSE  
HARBOUR ROAD  
PRIVATE MAIL BAG  
TEMA  
GHANA*

*Telephone: 233-(0)303-204726  
Telefax: 233-(0)303-202854*



***FOR CONTRACTOR:***

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF GHANA**

**Witnessed:**

**By .....**

**By .....**

**Its .....**

**Its .....**

**FOR GHANA NATIONAL  
PETROLEUM CORPORATION**

**Witnessed:**

**By .....**

**By .....**

**Its .....**

**Its .....**

**FOR**

**Witnessed:**

**By .....**

**By .....**

**Its .....**

**Its .....**

**FOR**

**Witnessed:**

**By** .....

**By** .....

**Its** .....

**Its** .....